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1912
1881
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THE LAW

OF

TRIAL JUSTICES

A FULL AND COMPLETE DIGEST

OF THE STATUTE LAWS PERTAINING TO THE OFFICES OF TRIAL JUSTICE AND OF CONSTABLE IN THE STATE OF SOUTH CAROLINA;

AND ALSO,

A DIGEST

OF THE

COMMON LAW OF CRIME,

TOGETHER WITH

A LARGE NUMBER OF FORMS OF WARRANTS AND OTHER FORMS OF PRACTICE AND PLEADING IN THE COURTS OF TRIAL JUSTICES, ARRANGED UNDER THEIR APPROPRIATE HEADS.

BY JUNIUS H. EVANS, ESQ.,

OF

MARION, S. C.

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PREFACE.

A slight acquaintance with the Trial Justice System of this State, is sufficient to evince the propriety of, if not *necessity* for, the appearance of some such work as the present one purports to be, however much its execution may fall short of what it should be.

My object has been to supply such a Manual of the Law, simplified and condensed, and with all necessary forms, under appropriate heads, as will render the duties of the offices of Trial Justice and Constable plain and intelligible. If I have succeeded, the advantages that will result are obvious, and must effect a salutary change in the present general administration of those offices.

It is intended to occupy the relation to the Trial Justice System, that "Pressley's Law of Magistrates" sustained to the old System of Magistrates, of which work it is barely more than a new edition, so revised as to make it applicable to the present system, and the changes in the law that have occurred since 1848.

JUNIUS H. EVANS.

Law of Trial Justices.

—o—

ABDUCTION.

Definition.—Is the unlawful taking, or causing to be taken away, of a maiden, within the age of sixteen years, from the custody, and against the will of her father, mother, or such other person as shall, by lawful means, happen to have the keeping, charge, or governance of such maiden.—Gen. Stat., Sec. 1, 735.

Person Charged.—The person charged with the offence, must be above the age of fourteen years.

Punishment.—The punishment is by fine, in the discretion of the Court, or imprisonment for the space of two years; and, if, in addition thereto, the maiden be deflowered or married, the punishment is by fine, in the discretion of the Court; one moiety of such fine shall be for the State, and the other moiety to the party aggrieved, or, imprisonment for five years.—*Ib.*, Sec. 2.

Form No. 1.—Warrant for Abduction.

THE STATE OF SOUTH CAROLINA, }
County of ——— }

Magistrate
A. B., Trial Justice, for the said County, in the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by (C. D.) that at (*name of County*), in the County and State aforesaid, on the —— day of ——— A. D. 18—, one (E. F.) did unlawfully take and convey from the custody and against the will of him, the said (C. D.), (*if the maiden be married or deflowered, state that fact also*), (G. H.), a maiden within the age of sixteen years, the (*state whether daughter, ward, pupil, or apprentice,*) of him, the said (C. D.)

These are, therefore, to command you to apprehend the said defendant, (E. F.), and bring —— before me, to be dealt with according to law.

Given under my hand and seal, the —— day of ———, A. D. 18—.

(A. B.,) [L. S.]

~~Trial Justice.~~

Magistrate

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———

Personally appeared before me, (A. B.,) a Trial Justice of the said County and State, (C. D.,) who, being duly sworn, says: That at (*name of place*) in the County and State aforesaid, on the——day of——A. D. 18—, one (E. F.) did unlawfully take and convey from the custody of, and (*here insert whether married or deflowered, if such be the fact*), against the will of him, the said (C. D.) by (*here, if known, state the means of such abduction; whether by secret letters, messages or otherwise*) (G. H.,) a warden within the age of sixteen years, the (*state whether daughter, ward, pupil or apprentice*) of him the said (C. D.)

That (X., Y., and Z.) are material witnesses thereto.

[Signed] (C. D.)

Sworn to before me, this —— day of ——, A. D. 18—.

(A. B.,)

~~Trial Justice.~~

Magistrate

ACCESSARY.

Definition.—An accessary is he who is not the chief actor in the offence, nor present at the performance, but is, in some way, connected therein, either before or after the fact committed.—4th Bl. Com., 35.

In Treason, &c.—In treason, and offences less than felony, all persons concerned are principals.—1 Russ., 21; 4th Bl. Com., 35 to 40.

Accessary Before the Fact.—An accessary before the fact, is he, who, being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit it.—1 Hale P. C., 615.

After the Fact.—An accessary after the fact, is one, who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon.—4th Bl. Com., 37.

Who May be Accessaries.—A wife may be accessary before the fact, by procuring her husband to commit a felony; but cannot become an accessary after the fact by concealing her husband, for she is presumed to act by his coercion. The husband, however, becomes accessary by concealing the wife, the parent, the child, etc.—2. Haw., 320; 4 Bl. Com., 39.

None in Sudden Offences.—Offences which, in the construction of law, are sudden and unpremeditated, can only have accessaries after the fact.

Where an act is committed through the agency of a person who has no legal discretion, the motor, though absent at the time the crime was committed, will not be considered accessary, but a principal in the first degree.—Fost., 340 1 P. C., 118.

All accessaries before the fact, are punished as principals.—Gen. Stat., 741.

Accessaries, either before or after the fact, may be indicted and convicted, whether the principal felon has or has not been convicted, or is or is not amenable to justice, or is unknown, by any Court having jurisdiction to try the principal felon.—State *vs.* Green, 4th Strob., 138; Gen. Stat., 742.

FORM NO. 2.—WARRANT FOR ACCESSARY.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

By A. B., Trial Justice, in and for the said County, in the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by (C. D.) that at ———, in the County and State aforesaid, on the —— day of —— A. D. ——, one (E. F.) did feloniously counsel, hire and procure one (G. H.), principal, (*or some person unknown*) to (*here set forth the felony committed.*)

These are, therefore, to command you to apprehend the said defendant, (E. F.), and bring —— before me, to be dealt with according to law.

Given under my hand and seal, the —— day of ———, A. D. 18—.

A. B., [L.S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

Personally appeared before me, (A. B.,) a Trial Justice of the said County and the said State, (C. D.,) who, being duly sworn, says: *Continue as in preceding form—set forth, particularly, the full name of the principals, if known; if unknown, should state "some person or persons to affiant unknown," the offence committed, with time, place and circumstance; the name of the accessary, and what part he acted in the matter, and the names of the witnesses.*)

NOTE.—The affidavit upon which the warrant is issued should, in all cases, accompany or be attached to the warrant.

ACCOMPLICE.

What Is.—This term includes all *particeps criminis*, but is generally applied to those who are admitted as witnesses against their fellow-criminals.—4th Bl. Com., 331; Bouvier's Law Dic., 46.

When may Admit.—The admission of accomplices as witnesses is justified only by the necessity of the case. A Trial Justice, or Justice of the Peace, has no authority to pardon an offender, and to tell him he shall be a witness at all events against others. But where the evidence appears insufficient to convict two or more without the testimony of one of them, the justice may encourage the hope that he who will fairly disclose the whole truth, shall himself escape punishment.

Power of Justice.—This discretionary power, however, of Justices of the Peace is founded in practice only, and cannot control the action of the Court if there be some important reason to the contrary.—4th Bl. Com., Vol. 331; Comp. 331.

Statement to be Taken in Writing under hand of Justice within two days.—If an accomplice confess and charge others, his statement should be carefully taken down in writing, and certified under the hand of the justice within two days. The confession should be taken down particularly and duly certified; for in case of his death, this confession may be used in evidence on the trial of the others. He may be tried and convicted on this statement in case he fails to make a fair and full disclosure on trial of those concerned with him.

After Confession.—After confession the accomplice should be committed for trial or bailed; if the offence be bailable, the recognizance should be conditioned for his appearance to stand trial with the others.

ACCUSED PERSONS.

Rights of.—No person shall be held to answer for any crime or offence until the same is fully, fairly, substantially and formally described to him; or be compelled to accuse or furnish evidence against himself; and every person shall have a right to produce all proofs that may be favorable to him, to meet the witnesses against him face to face, to have a speedy and public trial by an impartial jury, and to be fully heard in his defence by himself or by his counsel, or by both, as he may elect.—Con. S. C., Art. 1, S. 13.

All accused persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, where the proof is evident or the presumption great; and excessive bail shall not, in any case, be required, nor corporal punishment inflicted.—*Ibid* S., 16.

Witnesses of Accused in Felonies.—The accused shall, in felonies, and in no other cases, have the like process to compel the attendance of any witnesses in their behalf as is granted or permitted on the part of the State.—Gen. Stat., 747.

ADULTERY AND FORNICATION.

1st.—Definition of.
2d.—Punishment.

1st.—DEFINITION OF.

Adultery, is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other, without living together, of a man and woman, when either is lawfully married to some other person.—17 Stat., 328, Sec. 2.

Fornication, is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other, without living together, of a man and woman, both being unmarried.—*Ib.*, Sec. 3.

2d.—PUNISHMENT.

Any man and woman who shall be guilty of the crime of Adultery or Fornication, shall be liable to indictment, and, on conviction, shall be severally punished by a fine of not less than one hundred dollars, or imprisonment for not less than six months, nor more than one year, or by both fine and imprisonment, at the discretion of the Court.—16 Stat., 714; 17 Stat., 328.

AFFIDAVIT.

What is—An affidavit is an oath in writing, sworn to before some person having authority to administer such oath.

Requisites of.—For form and requisites of an affidavit for any particular case, refer to the case.

It should be entitled of the County and State in which it is taken, and contain in full the names and residences of the party taking the oath, and certified by the officer before whom it is taken, with the style of his office.

If the party taking the oath knows of the subject matter of his own knowledge, it should be stated positively; but if the information be derived from others, the statement should be "that he is informed and believes." But if the matter be only a conclusion from circumstances, the affidavit should be "that he hath just reason to believe and doth believe." If the officer taking the affidavit be the person who is to act on it judicially, the circumstances inducing belief need not be set forth at length in the affidavit; but if it be intended for the judicial action of another, then the circumstances should be particularly set forth.

AFFIRMATION.

Valid as an Oath.—Any person who shall appear in any of the Courts of Justice, or before any Judge or Trial Justice in this State, either as juror, witness, party or otherwise, in any cause, civil or criminal, and

shall make a solemn and conscientious declaration and affirmation, according to the form of his profession, in any matter, cause, or thing, wherein an oath is required by law, such solemn and conscientious declaration and affirmation shall be deemed, held and judged and taken as valid and effectual, to all intents, constructions and purposes whatsoever, as if such person had taken an oath on the Holy Evangelists of Almighty God.—Miller's Compilation, 159, Note *a*, ; Gen. Stat., 505.

AFFRAY AND AFFRAYERS.

What is an Affray.—An affray is the fighting of two or more persons in some public place, to the terror of the people.—4th Bl. Com., 145.

Bare words do not amount to an affray; nor an assault in a private place, out of the hearing or seeing of any, the parties excepted; nor the assembling of one's friends and neighbors in one's house, against those who threaten to do such person some violence therein, nor to any person arming himself and endeavoring to suppress disturbers of the peace and quiet of the State.—1 Hawk., 134, 135, 136.

Private Person may Arrest Affrayers, When.—A private person is justifiable in suppressing, or endeavoring to suppress an affray, and the combatants are liable for whatever consequences may ensue. But more especially a Constable, who is bound to keep the peace; and to that purpose may break open doors to suppress an affray, or apprehend the affrayers, and carry them before a Justice of the Peace to be tried, and, if found guilty, to be punished or required to find sureties for the peace.

Duty of Constable.—He may also call others to his assistance, who, if they refuse to obey his summons, shall be punished as for a misdemeanor.—4th Bl. Com., 145; 1 Haw., 137; Rev. Stat. C. xxvi; S. 10, p. 207.

Not to Arrest Unless in View.—A Constable has no right to arrest those who barely contend with hot words, nor for an affray done out of his own view, without a warrant from a Justice of the Peace, unless a felony were done, or likely to be done.—1 Haw., 137.

All affrayers, rioters, disturbers and breakers of the peace, and otherwise disorderly and dangerous people, shall be examined by the Trial Justice, before whom they are brought, and may be tried before him, and if found guilty, be required to find sureties for the peace, and be punished by fine not exceeding one hundred dollars, or imprisonment in the Jail or House of Correction, not exceeding thirty days, or when the offence is of a high and aggravated nature, they may be committed or bound over for trial before the Court of General Sessions.—Gen. Stat., 195.

FORM NO. 3.—WARRANT TO APPREHEND AFFRAYERS.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———— }

A. B., Trial Justice in and for the said County and the said State.

To any Lawful Constable:

Whereas complaint on oath has been made unto me by C. D., that at ——— in the County and State aforesaid, on the —— day of ———, A. D. 18—, A. O. and B. O., of the said County and State, in a tumultuous manner made an affray, wherein the person of the said C. D. was beaten and abused by them the said A. O. and B. O., without any lawful or sufficient cause given to them, or either of them, by him, the said C. D.

These are, therefore, to command you to apprehend the said defendants A. O. and B. O., and bring them before me, to be dealt with according to law.

Given under my hand and seal this —— day of ———, A. D. 18—.

A. B. [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———— }

Personally appeared before me, A. B., a Trial Justice of the said County and the said State, C. D., who being duly sworn, says: That at ——— in the said County and State, on the —— day of ———, A. D. 18—, A. O. and B. O., in a tumultuous manner made an affray, wherein the person of him the said C. D. was beaten and abused by them, the said A. O. and B. O., without any lawful or sufficient provocation given to them, or either of them, by him the said C. D.

That X, Y, and Z, are material witnesses thereto.

(Signed) C. D.

Sworn to before me this —— day of ———, A. D., 18—.

A. B.,
Trial Justice.

AIDING IN FELONY.

(SEE ACCESSARY.)

AMENDMENT.

(SEE COURTS OF TRIAL JUSTICES—RULE II.)

ANIMALS.

(See Cattle, Larceny, Malicious Mischief.)

Cruelty To.—Whoever shall wilfully abuse, or, having the custody of any horse, mule or draught animal, or beast of burden, shall cruelly drive or work the same when unfit for labor, or cruelly abandon the same, or otherwise subject to unnecessary torture, suffering or cruelty, such animal, shall, on conviction before any Court of competent jurisdiction, suffer imprisonment for fifteen days, or pay a fine of fifteen dollars.—16 Stat., 492, Sec. 1 and 2.

By Railroad Companies.—Railroad Companies overloading cars, or confining animals in cars for a longer period than twenty-eight consecutive hours, without unloading them for food, rest and water, shall be held guilty of cruelty to animals, and liable to forfeit and pay a penalty of not less than fifty, nor more than five hundred dollars.—*Ib.* S. 3.

ANSWER.

(See Courts of Trial Justices.)

APPEAL.

An appeal is an application to a higher Court, to reverse the decision of a lower, upon certain grounds set forth in the notice of such application, and made to appear by the report of the case by the presiding officer of the Court below.

I.—Appeal in Criminal Cases.

II.—Appeal in Civil Cases.

III.—Forms.

I.—APPEAL IN CRIMINAL CASES.

1st.—Where Appeal Lies.

2d.—Procedure and Rights of Appellant.

1st. Where Appeal Lies.—Appeal in criminal cases, is to the next term of the Court of General Sessions for the County in which the case was tried.—Gen. Stat., Sec. 34, 201 and Sec. 1, 748; 17 Stat., 493.

2d. Procedure and Rights of Appellant.—The appellant shall, within five days after sentence, serve a notice of appeal upon the Trial Justice who tries the case, stating the grounds upon which the appeal is founded.—17 Stat., Sec. 2, 493.

Within ten days after said service, the said Trial Justice shall file in the office of the Clerk of Court, the said notice, together with the record and statement of all the proceedings in the case, and the testimony, in writing, taken at the trial, and signed by the witnesses.—*Ib.* Sec. 3, 493.

Upon service of the said notice, the said Trial Justice shall, on demand of the defendant, admit him to bail in such reasonable sum, and with good sureties, as said Trial Justice may require, conditioned to appear at the Court appealed to, and at any subsequent term to which the case may be continued, if not previously surrendered, and so from term to term, until the final decree, sentence, or order of the Court thereon, and to abide such final sentence, order or decree, and not depart without leave, and in the meantime to keep the peace and be of good behavior. *Ib.* Sec. 4.

The appeal shall be heard by the Court of General Sessions, upon the record as above required, and without the examination of witnesses in said Court, and may either confirm, reverse, or modify the sentence appealed from, or grant a new trial.—*Ib.* Sec. 6.

II.—APPEAL IN CIVIL CASES.

1st.—To what Court and when.
2d.—Notice of Appeal, &c.
3d.—Return, &c.
4th.—Hearing.
5th.—Dismissal of.
6th.—Principles of Determination.
7th.—Judgment on Appeal.
8th.—Restitution.
9th.—Costs to whom Awarded.

1st. To what Court and when.—The Appeal from a judgment rendered in any Civil action by a Court of Trial Justice shall be to the Circuit Court of the County wherein the judgment was rendered. Code Sec., 369, 658.

On such Appeal.

New Trial.—1. When the judgment was rendered upon an issue of law joined between the parties, or;

2. When it was rendered upon an issue of fact joined between the parties, whether the defendant was present at the trial, or not; the trial in the Circuit Court shall be *de novo*, when the amount for which judgment was demanded in the Court below, shall exceed ten dollars, or in actions for the recovery of personal property, the value of the property

as assessed and the damages recovered, shall exceed ten dollars, exclusive of costs. *Ib.* S. 369.

Exception.—If, however, under the 2d particular, the appellant state in his notice of appeal, that such appeal is taken upon question of law only, in such case a new trial shall not be had in the appellate Court but the appeal shall be heard and determined in such manner as if such amount or said value and damages, were ten dollars, or under. *Ib.*

Where the amount is ten dollars or under, the appeal is determined simply from the return of the Court below. *Ib.* S. 369 and 377.

Reversable by Supreme Court.—The determination of the Circuit Court on appeals from Trial Justices' Courts, is reversable, on a further appeal, by the Supreme Court. *Ib.* S. 11, p. 563.

2D.—NOTICE.

Requisites of.—The appeal is made by serving a notice of appeal, stating the grounds upon which the appeal is founded, within five days after Judgment rendered. *Ib.* S. 370; Davis *vs.* Vaughan; 7 Rich., N. S. 342.

Appeal may be dismissed on motion, if the notice state no ground of appeal. 2. Tillinghast & Shearman, N. Y., Prac., 995. Notice must be in writing. An oral notice is of no effect. *Ib.* 994.

Service of.—The notice must be served on the Trial Justice, personally, or on his clerk, if he has one; and upon the attorney for the respondent, or on the respondent, personally, or by leaving it at his residence with some person of suitable age and discretion; or if respondent is not a resident of the County, or cannot, after due diligence, be found therein, on his agent or the attorney, who appeared for respondent on the trial. If the Trial Justice be dead, insane, or removed from the County, or other reason; the notice cannot be served on him or his clerk, it must be served on the clerk of the County. Code S. 370, 374 and 376, 17 Stat., 306.

3D.—RETURN.

When to be made.—The Court below, after ten, and within thirty days from the service of the notice of appeal, must make a return to the appellate Court of the testimony, proceedings and judgment, and file the same in the appellate Court. Ib. S. 377.

Trial Justice out of office, dead, or insane.—A Trial Justice who has gone out of office, since rendering judgment, must nevertheless make a return of the same as if he was still in office. This return may be compelled by attachment. *Ib.* 378 and 379.

If the Trial Justice whose judgment is appealed from, be dead, insane, or removed from the State, the Court will determine the appeal as the facts had been returned by the Trial Justice. *Ib.* S. 380.

Form of Return.—The return must include the notice of appeal, and

all the original papers of the case, and contain *all* the evidence and proceedings upon the trial; should state the substance of the pleadings the nature of the issue, the judgment, the disposition of all questions arising at the trial, and the dates of the various proceedings, such as the return of the summons, the joinder of issue, the adjournments, if any, and the judgment.

If the notice of appeal is not returned, the Court will dismiss the appeal. When the Court fails to show what judgment, if any, has been rendered, the Court will on that ground, dismiss the appeal. When the return does not state all the evidence, the Court will not presume that there was evidence, not in the return, sufficient to warrant the judgment. Voorhies, N. Y., Annotated Code, 570; 2. Tillinghast & Shearman's, N. Y., Practice, 1,003.

Defective Return.—If the return be defective, the appellate Court may direct a further and amended return, as often as may be necessary, and may compel compliance with its order by attachment. For these purposes the Court is always deemed open. Code, S. 379.

4th.—HEARING.

Where new trial may not be had.—If a return be made, and the appeal is from a judgment where a new trial may not be had, it may be brought to a hearing, upon notice by either party of not less than eight days. It shall be placed on the Calendar, and continue thereon, without further notice, until finally disposed of. *Ib.* S. 381

Where may be had.—If the appeal be from a judgment where a new trial may be had, it may be brought to a hearing at any term of the Court at which a petit jury may be summoned to attend. Notice of issue must be served on the clerk eight days before Court, who shall thereupon enter the case on the Calendar, according to the date of the return. *Ib.*

5th.—DISMISSAL.

A motion to dismiss is the proper remedy in case of any defects in the notice of appeal, where it is served too late, or when the return is not filed in time, or is defective. 2 Tillinghast & Shearman Prac., 1,006.

If the appeal is from a judgment where a new trial may not be had, the Court is required to dismiss the appeal if neither party bring it to a hearing before the end of the second term, unless it continues the same for special cause shown. Code S. 381.

6th.—PRINCIPLES OF DETERMINATION.

The Appellate Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits.—Code S., 383.

All reasonable presumptions are to be made in support of the judg-

ment so far as to the regularity of the proceedings before the Justice is concerned.—Tillinghast & Shearman Prac., 1015; Habersham *vs.* Hopkins, 4th Strob., 240.

Judgment will be reversed for error in the charge of the Trial Justice that might have misled the jury, or if illegal evidence was admitted, under objection, or competent evidence was excluded that might have influenced the verdict, or if the judgment was entirely unsupported by evidence, or against clear, uncontradicted and unimpeached evidence. For excessive damages and for improperly non-suiting a plaintiff.—Voorhies N. Y. Code, 578; Tillinghast & Shearman Prac. 1006 and 1007.

New Trial Ordered Before Trial Justice.—Where a new trial shall be ordered before a Trial Justice, the parties will appear before him according to the order and the like proceedings will be had in the action, as upon the return of a summons personally served.—Code, S. 383.

If the appeal be from a judgment in which a new trial may be had and the issue before the Trial Justice was an issue of law, the Court will proceed to the hearing of the cause, or submit it to a jury, if such issue was upon a question of fact.

1. If the issue joined before the Trial Justice was an issue of law, the Court shall render judgment thereon according to the law of the case; and, if amendment be necessary, such amendment shall be allowed.—(See Courts of Trial Justices.)

And the opposite party required to answer such amended pleading or join issue thereon as the case may requre, summarily.

2. If, upon an appeal in an issue of law, the Court should adjudge the pleading complained of to be valid, it shall, in like manner, require the opposite party to summarily answer the pleading or join issue thereon as the case may require.

3. Upon an issue of fact being so joined, the Court shall proceed to hear the same trial by a jury in the same manner as issues joined in the Circuit Court.

4. Every such issue of fact, so joined, shall be tried in the same manner as actions commenced in the Circuit Court.

5. The powers of the Court are the same in such actions as all others pending in the Circuit Court; and in such appeal either party may, at any time before the trial, serve an offer, in writing, upon the opposite party, to allow judgment to be taken against him for the sum or property, or to the effect in such offer specified, and with or without costs, as said offer shall specify. If the party receiving such offer accept the same, and give notice thereof, in writing, within ten days, he may file the return and offer, with an affidavit of service of notice of acceptance thereof, and the Clerk shall thereupon enter judgment according to said offer. If the notice of acceptance be not given, the offer is deemed withdrawn and cannot be given in evidence. And if the party to whom the offer is made, fail to obtain judgment more favorable to him than specified in the offer, he shall not recover costs, but must pay the other party's costs from the date of service.

6. Either party may move for a new trial in said Court on a case or exception, or otherwise, and such motion may be made before or after judgment has been entered; and the after proceedings shall be such as are provided in the Code of Procedure for the Circuit Court.—Code, S. 383.

7th.—JUDGMENT ON APPEAL.

Judgment Roll.—The judgment must be annexed to the return, and this, with the notice of appeal, any offer, decision of Court, exceptions, case and papers in the cause, constitute the Judgment Roll, which must be filed with the Clerk of the Court.—Code, S. 384.

Judgment and its Enforcement.—Judgment on an appeal from a Court of Trial Justice, almost always consists of a simple affirmance or reversal. If the judgment is affirmed, the respondent may proceed as though no appeal had been had; the execution for its enforcement issuing out of the Court below; if reversed, the parties are remitted to their original rights, and may proceed as though no action had been brought. Where a new trial is had in the Appellate Court, the judgment thereon is enforced in that Court.—Tillinghast & Shearman, Prac., 1019.

Error in Fact.—If the appeal is founded on an error in fact in the proceedings, not affecting the merits of the action, and not within the knowledge of the Trial Justice, the Court may determine the alleged error in fact on affidavits, and may, in its discretion, inquire into and determine the same upon examination of witnesses.

Relief from Default.—If the defendant failed to appear before the Trial Justice, and satisfactorily excuses his default, and it is shown that manifest injustice has been done, the Court, may, in its discretion, set aside or suspend judgment, and order a new trial before the same or any other Trial Justice in the same County, at such time and place, and on such terms as the Court may deem proper.—Code, S. 383.

8th.—RESTITUTION.

If the judgment below or any part thereof, has been paid or collected, and the judgment is afterwards reversed, the Appellate Court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection.—Code, S. 380.

Order, How Obtained.—The order may be obtained on proof of the facts, made at or after the hearing, upon a previous notice of six days.—*Ib.*

Restitution cannot be made, as a matter of course, by the Clerk, but an order of Court is essential.—Tillinghast & Shearman's Prac., 1024.

Payment may be shown by affidavit, or by a transcript of docket, showing that the judgment has been satisfied.—*Ib.*

9TH.—COSTS.

How Awarded.—In judgment on appeal, if it be affirmed in part, the costs, or such part as to the Court shall seem just, may be awarded to either party. Generally, however, the costs are to be allowed the prevailing party, in all cases, with the following limitations and exceptions: In the notice of appeal, the appellant shall state in what particular or particulars he claims the judgment should have been more favorable to him, and the amount it should have been.

Within fifteen days after the service of the notice of appeal, the respondent may serve upon the appellant and Trial Justice, an offer, in writing, to allow the judgment to be corrected in any of the particulars mentioned in the notice of appeal. The appellant may thereupon, and within five days thereafter, file with the trial Justice, a written acceptance of such offer, who shall thereupon make a minute thereof on his docket, and correct such judgment accordingly, and the same, so corrected, shall stand as his judgment and be enforced accordingly.

If such offer be not made and the judgment in the Appellate Court be reversed, the appellant shall recover costs. If such offer be made and not accepted by the appellant, and the judgment be reversed, the said appellant shall not recover costs unless the judgment be made more favorable to him to the amount of at least ten dollars.—Code, S. 388.

If, upon appeal, a recovery for any debt or damages be had by one party, and costs be awarded to the other party, the Court shall set off such costs against such debt or damages, and render judgment for the balance.—*Ib.*

Amount of Costs.—In appeals from Trial Justice Courts to the Circuit Courts, costs shall be awarded to the prevailing party, as follows:

All proceedings before trial	$3 00
Trial of the cause	5 00

When the amount sued for is under twenty dollars, only two dollars and fifty cents for trial.—17 Stat., 297.

If the appeal is dismissed, for want of prosecution, no costs shall be allowed to either party.—*Ibid.*

III.—FORMS.

FORM NO. 6—NOTICE OF APPEAL.

THE STATE OF SOUTH CAROLINA, } *Court of Trial Justice.*
COUNTY OF ———— }

C. D., PLAINTIFF, } *Action for* ———.
vs.
E. F., DEFENDANT. }

NOTICE OF APPEAL, E. F., APPELLANT.

To A. B., Trial Justice, and C. D., Plaintiff:

Take notice, that the (defendant) in this action, appeals to the (Court of Common Pleas) for the said County and State, from the judgment rendered in favor of the (plaintiff) herein, on the —— day of ——, 18—, on the following grounds:

1. That the evidence of O. R., a witness offered on part of the defence, was improperly rejected.

2. That defendant's motion for non-suit was improperly denied.

3. That the decree of the Trial Justice (*or the verdict of the jury, as the case may be*) was contrary to the law and evidence of the case.

4. That the Trial Justice's lost jurisdiction of the case, by omitting to render judgment within the time prescribed by law, etc., (or when default has been made, and a new trial is desired). That manifest injustice has been done to this defendant, in that moneys paid on account of the plaintiff's claim, to wit: the sum of ten dollars were not allowed upon the judgment, (etc., as the case may be).

And the appellant claims, that the said judgment ought to have been (for a sum less by ten dollars than the amount thereby awarded to the respondent,) (or otherwise as the case may be).

[Signature, either of appellant or his counsel.]

[Date and address.]

FORM NO. 7, TRIAL JUSTICE'S RETURN ON APPEAL.

[*Refer to Subdivision* 3, *Appeals in Civil Cases, as to what Return should Contain.*]

THE STATE OF SOUTH CAROLINA } *Court of Trial Justice.*
COUNTY OF ———— }

C. D., PLAINTIFF, } *Action for* ———.
vs.
E. F., DEFENDANT. }

RETURN OF TRIAL JUSTICE.

To the Court of Common Pleas for the said County of the said State:

The Return of A. B., Trial Justice, in the cause above stated, is as follows:

The process—herewith filed and marked Exhibit A—was issued on

the —— day of ——, A. D. 18—, and returnable on the —— day of ——, A. D. 18—, at which later date the issue between the said parties, plaintiff and defendant, was joined and determined under the evidence, herewith returned and marked Exhibit B.

The plaintiff, complaining (refer to complaint annexed and marked as an exhibit) alleged:

(*State substance of complaint.*)

Before issue joined, the defendant, (or plaintiff) by his counsel, (if any) (*here state any motion or offer made by or on behalf of the defendant or plaintiff, which motion or offer will be annexed and reference made to, as an exhibit; if a motion, state disposition of and reasons for such disposition; if an offer, state whether accepted or not.*)

The defendant answering (refer to answer annexed and marked as an exhibit), said:

((*The substance of answer.*)

(*Disposition of questions of law or of evidence arising at the trial.*)

(*Adjournments, if any, during progress of trial.*)

(*If the case be before a jury, state substantially the charge to the jury*), *as: The Trial Justice instructed the jury, &c.*

(*The verdict or decree.*)

(Conclusion.) Whereupon the defendant (or plaintiff) appealed to the Court of (Common Pleas) on the grounds stated in the notice of appeal herewith filed, and hereunto annexed and marked Exhibit.

(Date.) Respectfully submitted, A. B.,
Trial Justice.

NOTE.—All the papers in the case should be included in the return and referred to as exhibits. Papers annexed to return, but not referred to in said return, are not regarded a part of the said return.

FORM NO. 8—JUDGMENT ON APPEAL.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ————— }

C. D., PLAINTIFF,
vs.
E. F., DEFENDANT, } *Action for* ——.

The above-named (E. F.) having appealed to this Court from the judgment of (A. B.) Trial Justice, in and for the said County and State, rendered on the —— day of———, A. D. 18—, and ———, of counsel for the appellant, having been heard in support of the said appeal, and ———, counsel for respondent, *in opposition thereto:

It is now, on motion of ———, adjudged that the said judgment be affirmed (or reversed), with ——— dollars, costs.

(Date.) (Signature.)

FORM NO. 9.—ORDER GRANTING RELIEF FROM DEFAULT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———— }

(*Title of cause as in preceding form.*)

(*Continue as in preceding form down to *, then continue*) :

And it appearing to the Court that the defendant's default is satisfactorily excused, and that manifest injustice has been done to the defendant, it is now, &c.,

Ordered—

1. That the aforesaid judgment of the Court of Trial Justice be set aside.

2. That a new trial be had before the Court of the said A. B. Trial Justice (or any other Trial Justice of the same County as the Court may direct), on (&c.), or on such other days as it may be adjourned to.

(Signature.)

APPRAISEMENT AND APPRAISERS.

Definition—Appraisement is a just valuation of property.

Appraisers are persons appointed by competent authority to value goods or property.

In case of the death of a person dying intestate, an inventory must be made of the goods of which he died possessed or was entitled to; also, where goods and chattels are seized under a distress warrant. Appraisers are also appointed to set off homestead of insolvent debtors, to survey rice lands, (see Dams & Drains), to determine the value of an estray and to assess the damage done to property by some public work, or to estimate its value when taken for public use.

Qualifications.—Appraisers shall in all cases be three or more respectable, disinterested free-holders, residents of the County, who shall be appointed and sworn as follows:

Appraisers to appraise any testator's or intestate's goods and chattels shall be appointed by the Judge of Probate of the County and shall enter upon that office, after they have taken the following oath before a Trial Justice, who is empowered to administer the same.

"You, A. B. C. D. E. F., &c., do swear that you will make a just and true appraisement of all and singular the goods and chattels (ready money only excepted,) of G. H. deceased, as shall be produced by J. K., the executor or administrator of the estate of the said G. H., deceased, and that you will return the same, certified under your hands, unto the Judge of Probate of————County, within the time prescribed by law."

Where a homestead is to be set off, one appraiser shall be selected by

the debtor, one by the creditor and one by the sheriff, who shall be sworn by a Trial Justice as follows

"You do swear that you will impartially appraise and set off by metes and bounds, a homestead of (debtor's) estate, such as he may select, not to exceed the value of one thousand dollars, and personal property, consisting of such articles as are mentioned in the constitution, not to exceed in value the aggregate sum of five hundred dollars." Gen. Stat., C. 96, p. 475.

To survey rice lands, one appraiser shall be selected by complainant, one by defendant and one by the Trial Justice who shall be sworn by the said Trial Justice, as in the above form. "To justly and impartially determine the matter in dispute."

General form of appraisers oath: "You, and each of you, shall well and truly appraise the goods and chattels mentioned in the inventory according to the best of your understanding, So help you God."

Form No. 10.—Of Appraisement.

The appraisement may be made in the form of an inventory, specifiying the particulars, and their respective valuation, and concluded as follows:

Appraised by us, this———day of———A. D. 18—:

A. B.,
C. D.,
E. F.,
Sworn Appraisers.

Appraisers to set off homestead or survey rice lands, reports their action in the form of a return.

Form No. 11.—Return of Appraisers to Set Off Homestead.

THE STATE OF SOUTH CAROLINA,
County of ———— }

We, E. C., C. D., and E. F., commissioners appointed to set off the homestead of G. H., debtor, having duly qualified before A. B., Trial Justice, hereby return that on the ——— day of ——— 18—, we went as directed upon the estate of the said G. H., and set off unto him of the said estate, as a homestead, the following described property, to wit; (*here follow description of property, the metes and bounds, number of acres and references to plot, if any, which should be annexed to this return as an exhibit*), which we have estimated as of the value of one thousand dollars.

We further return that of the personal property of the said G. H., we have set apart as a homestead, the following articles, to wit: (*here follow an enumeration of the articles, and the value of each, which must be of such*

articles as are specified in the Constitution, and the aggregate value of which must not exceed five hundred dollars.)

Given under our hands and seals the ——— day of ——— A. D. 18—.

E. C., [L. S.]
C. D., [L. S.]
E. F., [L. S.]

Commissioners to set off Homestead.

(For forms of return of Appraisers to survey rice lands.)

(See Dams and Drains).

APPRENTICE.

1st. Who May Take, How Bound, &c.
2d. Rights and Duties of Master.
3d. Rights and Duties of Apprentice.
4th. Forms.

1st—WHO MAY TAKE, HOW BOUND, &c.

Who May Take.—Any person of any lawful employment, art, trade, or mystery, may take one or more apprentices.—Gen. Stat. C. ciii, S. 1, p. 488.

How Bound.—Any infant may be bound an apprentice, by deed of indenture, certified under the hand and seal of a Trial Justice. The Trial Justice must also certify under his hand and seal, upon such indenture, the presence and approbation of the father, mother, or guardian of such infant; and if such infant have neither father, mother, or guardian, then the presence and approbation of the grand-father, grand-mother, or brother, sister, or uncle, or aunt, of mature age, each in the order enumerated, or the approval of the Trial Justice himself.—*Ib.* S. 2.

County Commissioners May Bind.—The County Commissioners shall bind as apprentice, any poor children that shall be chargeable to the County, until every male child shall arrive to the age of twenty-one years, and every female child, until she shall arrive unto the age of eighteen years, or be married.—*Ib.* C. xxix, S. 16, p. 221.

May Bind Illegitimate Children.—The County Commisssioners may also have power to bind out to service, illegitimate children above the age of five years, who are liable to become chargeable to the County, or likely to be demoralized by the vicious example and conduct of the mother or other person having them in charge.

2d—RIGHTS AND DUTIES OF MASTER.

It is the duty of the Master to instruct his apprentice in the knowledge of the art of which he has undertaken to teach him the elements. Watch over his conduct, showing him a good example, and fulfilling

towards him the duties of a father, as in his character of Master, he stands *in loco parentis*. He is also required to fulfill all the covenants he has entered into by the indenture. He must not abuse his authority, either by bad treatment, or by employing his apprentice in menial services wholly unconnected with the business he has to learn. If the apprentice absent himself from his Master, and work for another, the Master may sue as for hire. Master's liability depends wholly on terms of binding in the indenture.—1 Burr, 501; Lightly *vs.* Clauston, 1 Taun. 112.

3d—RIGHTS AND DUTIES OF APPRENTICE.

An apprentice is bound to obey his Master in all his lawful commands, take care of his property and promote his interests; endeavor to learn his trade or business, and perform all the covenants in his indenture not contrary to law. He must not leave his Master's service during the term of the apprenticeship.

The apprentice is entitled to payment for extraordinary services, when promised by the Master.—1 Whart., 113; 2 Kent's Com., 211-214.

Complaint By or Against Apprentice.—On complaint made by an apprentice, charging his or her Master or Mistress with misuse, or by the Master or Mistress against such apprentice, before any two Trial Justices of the County, setting forth the cause of such complaint, it shall be the duty of such Trial Justices to make such order between the parties, as the equity and justice of the case may require, subject, nevertheless, to the right of either party to appeal from such order to the Court of Common Pleas for the County, at the next ensuing term.—Gen. Stat. C. ciii, S. 8, p. 490.

A Trial Justice has the power to punish an apprentice, or discharge him from his indentures.

If apprentice be cruelly treated by Master or Mistress, he or she should be bound over to the Court of General Sessions.—1 Chit., 72.

An apprentice cannot be discharged, because of an accident that renders him incapable of service.—Str., 99.

4th—FORMS.

Form No. 12.—Indenture of Apprentice.

THE STATE OF SOUTH CAROLINA, }
County of ———— }

This indenture witnesseth: That —— hath of his (or her) own free will and accord, and by and with the consent and approbation of (father, mother or next of kin, in the order mentioned in the Statute,) put himself apprentice unto —— to learn (name of trade,) and after manner of an apprentice to serve the said —— from the date hereof, for, and dur-

ing, and unto the end and term of —— next ensuing. During all which term, the said apprentice —— said —— shall faithfully serve —— secrets keep —— lawful commands everywhere readily obey; —— shall do no damage to said —— nor see it done by others, without telling or giving notice thereof to said ——; shall not waste —— goods, nor lend them unlawfully to any, nor contract matrimony within the said term. At cards, dice, or any unlawful game, shall not play, whereby said ——may have damage. With his own goods, nor the goods of others, without license from the said —— shall neither buy nor sell; he shall not absent himself from said —— service, day or night without leave; nor haunt ale houses, taverns or play houses; but in all things behave himself as a faithful apprentice ought to do during the said term.

And the said —— shall use the utmost of his (or her) endeavor to teach or cause to be taught or instructed, the said apprentice in the art or trade of a —— and procure and provide for him (or her,) sufficient meat, drink, lodging, and washing, fitting for an apprentice during the term of ——.

And for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves, each unto the other, firmly by these presents.

In witness whereof the said parties have interchangeably set their hands and seals hereunto this —— day of —— A. D. 18 —.

[L. S.]
[L. S.]
[L. S.]

Signed, sealed and delivered in the presence of

FORM NO. 13.—THE SAME WITH APPROBATION OF COUNTY COMMISSIONERS.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ————.

This Indenture, made this —— day of —— A. D. 18—, between (name of apprentice,) a minor, aged —— years, (with the approbation and consent of the County Commissioners of the said County, testified by the signing and sealing these presents,) of the one part, and (name of master or mistress) of —— of the other part.

Witnesseth: &c., (*Continue as in form preceding.*)

FORM NO. 14.—ASSIGNMENT OF INDENTURE.

I, B. C., (master or mistress, or executor or administrator of C. D., master or mistress,) of E. F., the within named apprentice, by and with the consent and approbation of B. D., his (*father, mother, guardian or next of kin as the case may be,*) for divers good reasons, do hereby assign, transfer and set over unto A. S. all right, title, duty and term of service, which I have in the said apprentice, by virtue of the within written in-

denture; the said A. S. binding himself well and truly to perform all the duties and obligations required by the master by the within indenture.

Dated at —— this —— day of —— A. D. 18—.

(The Apprentice,) [L. S.]
(The Father,) [L. S.]
(The Master or Executor,) [L. S.]
(The Assignee,) [L. S.]

Signed and sealed in the presence of

FORM No. 15.—WARRANT AND AFFIDAVIT AGAINST MASTER.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ————.

By A. B. and R. C., Trial Justices in and for the said County in the said State:

To any Lawful Constable:

Whereas complaint upon oath has been made unto us by A. P., apprentice unto A. M. of the said County, carpenter, that the said A. M. hath ill-used and ill-treated him, the said A. P., by cruel punishment, (*beating him without cause, or by not allowing him the said A. P., sufficient meat, drink or apparel, as the case may be.*)

These are therefore to command you to apprehend the said defendant A. M., and bring him before us to be dealt with according to law; and that you give notice to the said apprentice, A. P., that he appear before us at the same time and place to make good his complaint.

Given under our hands and seals this —— day of —— A. D. 18—.

A. B., [L. S.]
Trial Justice.
R. C., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ————.

Personally appeared before us A. B. and R. C., Trial Justices in and for the County and State, A. P. who being duly sworn, says: That he, the said A. P., about the —— day of 18—, became bound an apprentice unto A. M., carpenter, of the said County, that at several times since he entered upon the said apprenticeship the said A. M., hath misused and ill-treated him, particularly, (*here recite the circumstances of ill-treatment*, &c.)

Sworn to before us, &c.

A. P.,
Apprentice.

FORM NO. 16.—WARRANT AND AFFIDAVIT AGAINST APPRENTICE.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———— }

By A. B. and R. C., Trial Justices in and for the said County and the said State.

To Any Lawful Constable:

Whereas complaint has been made unto us by A. M., of the said County, carpenter, that A. P., his apprentice, has been guilty of several misdemeanors, or has been and is refractory and disobedient to him, the said A. M., his Master.

These are, therefore, to command you to apprehend the said defendant, A. P., and bring him before us to be dealt with according to law; and you give notice to the said Master, that he appear before us at the same time and place, to make good his complaint.

Given under our hands and seals this —— day of ——— 18—.

A. B. [L. S.]
Trial Justice.
R. C. [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———— }

Personally appeared before us, A. B. and R. C., Trial Justices of the said County and State, A. M., who, on oath, says: That A. P., apprentice to him by indenture, hath in the service of his apprenticeship, been guilty of several misdemeanors, miscarriages, and ill-behavior, and hath been refractory and disobedient to him the said A. M., particularly, (*here recite the circumstances of the ill conduct, &c.*)

(Signed) A. M.

Sworn to before us this —— day of ———, A. D. 18—.

A. B. [L. S.]
Trial Justice.
R. C. [L. S.]
———— *Trial Justice.*

ARREST.

Definition.—Arrest signifies to stop, to seize, to deprive one of his liberty by virtue of legal authority.

Arrests are either in civil or criminal cases.

In Civil Cases.—Arrest in civil case, is the apprehension of a person by virtue of a legal authority, to answer the demand against him in a civil action.

In Criminal Cases.—Arrest in a criminal case, is the apprehending or restraining of one's person, in order to be forthcoming to answer an alleged or suspected crime.—4 Blk. Com., 290.

I. Of Exemption from Arrest.
II. Of Arrest in Civil Actions.
III. Of Arrest in Criminal Cases.

I.—OF EXEMPTION FROM ARREST.

No person shall be freed from arrest for treason, felony, or breach of the peace.—4 Inst. 24, 25.

The Senators and Representatives of the United States, shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of the respective Houses, and in going to and returning from the same.—Con. U. S., Art. 1, Sec. 6.

Members of either branch of the State Legislature, are privileged from arrest during their attendance on, going to, and returning from, the General Assembly, and for ten days previous to the sitting, and ten days after the adjournment thereof.

But these privileges protect no member charged with treason, felony, or breach of the peace.—Con. S. C., Sec. 17, Art. 2.

No civil officer shall execute any process, (*except for treason, felony, or breach of the peace,*) on any person engaged in the Military service, required by the laws of this State, going to or returning from the same, under the penalty of twenty-five dollars, and the service of such process shall be void.—Gen. Stat., C. 138, Sec. 3, p. 744.

In cases of corporations, the process is by a distringas, for they cannot be arrested.—3 Salk., 46.

No civil or criminal process shall be served on Sunday, except for treason, felony, or breach of the peace.

Nor shall any female be arrested in any civil action, except for wilful injury to person, character, or property.—Gen. Stat., C. 20, p. 162.

Persons necessarily going to, attending and returning from, the Courts of record of this State, (allowing thirty miles per day for the traveling of such persons,) shall be free from arrest, except for treason, felony, and breach of the peace.—Gen. Stat., C. 58, p. 504.

Electors shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest and civil process, during their attendance at elections, and in going to and returning from the same.—Con. S. C., Art. 8, Sec. 6.

II.—ARRESTS IN CIVIL CASES.

1st. When Defendant may be Arrested.
2d. The Process by which the Arrest is Made.
3d. The Order Arrest.
4th. The Arrest.
5th. Forms in Arrests in Civil Actions.

1st. WHEN THE DEFENDANT MAY BE ARRESTED.

The defendant may be arrested, as hereafter prescribed, in the following cases:

First.—In an action for the recovery of damages, in a cause of action not arising out of contract.

(1.) When the defendant is not a resident of the State,
(2.) Or is about to remove therefrom.
(3.) For an injury to the person.
(4.) Or injury to character.
(5.) For injuring property.
(6.) For wrongfully taking, detaining, or converting property.

Second.—In an action.

(1.) For a fine or penalty.
(2.) On a promise to marry.
(3.) For money received, or property embezzled, or fraudulently misapplied, by

I.—A public officer.
II.—An attorney, solicitor, or counsellor.
III.—An officer or agent of a corporation or banking association, in the course of his employment as such.
IV.—Or by any factor, agent, broker, or other person in a fiduciary capacity.

(4.) For any misconduct or neglect.

I.—In office, or
II.—In a professional employment.

Third.—In an action to recover the possession of personal property, unjustly detained, where the property or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the Sheriff, and *with the intent*

(1.) That it should not be so found or taken, or
(2.) To deprive the plaintiff of the benefit thereof.

Fourth.—When the defendant has *been guilty of a fraud*,

(1.) In contracting the debt, or incurring the obligation for which the action is brought, or

(2.) In concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought.

Fifth.—When the defendant has removed or disposed of his property, or is about to do so, with *intent to defraud his creditors.*—Code, Sec. 202.

Waiver of Right of Arrest.—The settlement of a fraudulently contracted debt, or of a debt which, for any other reason, would render the defendant liable to arrest, upon new terms, and with additional consideration, waives the *tort;* and the defendant cannot, therefore, be arrested in an action upon the new contract.—Tillinghast & Shearman's N. Y. Prac., 565.

2d.—THE PROCESS BY WHICH ARREST IS MADE.

By Order.—The arrest is made by an order for the arrest of the defendant, which must be obtained from a Judge, Trial Justice, or Clerk of the Court in which, or before whom, the action is brought. Code, Sec. 203.

Affidavit.—The order may be made when it shall appear to the proper officer by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, and that the case, *from the facts stated in the said affidavit,* is one of those mentioned in Section 202 of the Code, and reiterated above. See preceding page; Code, Sec. 204.

Requisites of Affidavit.—From the words of the above provision, as well as several decision on the point quoted by Tillinghast & Shearman's N. Y. Practice, Vol. 1, 580 and 581, and Voorhee's Code, viz: Adams *vs.* Mills, 3 How., 222; Pendar *vs.* Black, 4 How., 95; Whitlock *vs.* Roth, 10 Bart., 78; 5 How., 143; the facts and everything necessary to show a cause of action must be set forth in the affidavit—must be set forth by positive averment, and not argumentatively. If made upon information and belief, the source of information and the facts of belief should be set forth, and it also should state why the informant did not make an affidavit himself.

Name of Defendant Unknown.—If the name of the defendant is unknown, he may be indicated by any designation.—*Ibid.*

Before making the order, the Judge, or other officer, shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that, if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages that he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking be executed by the plaintiff, with sureties, he shall annex thereto an affidavit that he is a resident and householder or freeholder within the State, and worth double the sum specified in the undertaking over all his debts and liabilities.—Code, Sec. 205.

3d.—THE ORDER OF ARREST.

When Granted.—The order may be made to accompany the summons, or any time afterwards, before judgment.—Code, Sec. 206.

It should require the sheriff or constable of the county where the defendant may be found:

(1) To arrest him forthwith;

(2) To hold him to bail, in a specified sum; and

(3) To return the order, at a time and place therein mentioned, to the plaintiff or attorney by whom it shall be subscribed or endorsed.—*Ibid.*

4th.—THE ARREST.

By Whom Made.—The affidavit, and order of arrest, must be delivered to the sheriff or constable, who must immediately arrest the defendant and keep him in custody until discharged by law.—Code, Secs. 207 and 208.

He may call the power of the county to his aid, as in the case of process.—*Ibid.*

How Made.—It is sufficient if the defendant submits to arrest; but if he does not submit, and there is resistance, the arrest must be made by corporal touching.—McCracken *vs.* Ansley, 4 Strob., 5; Tillinghast & Shearman's N. Y. Prac., 590.

When Made.—The arrest cannot be made on Sunday, or if so made, is void.

Service of Papers.—The sheriff or constable, upon arresting the defendant, shall deliver to him a copy of the affidavit and order of arrest. Code, Sec. 207.

Discharge of Defendant.—The defendant, at any time before execution, shall be discharged from arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest.—Code, Sec. 209.

(*See Bail.*)

The Sheriff or Constable must endorse his return on the order, and deliver it to the person subscribing the order, within the time limited.—Code, Sec. 210.

5th.—FORMS IN ARREST IN CIVIL CASES.

Form No. 22.—General Form of Affidavit to Obtain Arrest.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———— } *Court of Trial Justice.*

C. D., Plaintiff,
vs.
E. F., Defendant.

C. D., the plaintiff above named, being duly sworn, says:

I. That E. F., the defendant above named, is justly indebted to deponent on the sum of ——— dollars, for (*here state cause as in the forms following; or, when cause of action is for a tort*):

I. That on or about the —— day of ——, 18—, E. F., the defendant above named, assaulted this deponent, (*here state tort; see following forms.*)

II. (*When the grounds of arrest are extrinsic to the cause of action, state here facts which bring the case within one of the classes where the defendant may be arrested.*)

III. That the plaintiff has commenced (*or, is* about to commence, by the summons hereunto annexed,) an action in this Court, against the said E. F., upon the cause of action above stated. C. D.

Sworn to before me, this —— day of ——, 18—. A. B.,
Trial Justice.

FORM NO. 23.—AFFIDAVIT FOR ARREST FOR PERSONAL INJURY.

[Title of Cause.]

[Venue.]

C. D., the plaintiff above named, being duly sworn, says:

I. That on the —— day of ——, 18—, E. F., of ———, in the said County of the said State, without any legal cause or provocation, violently assaulted and struck the deponent, (*describe the assault fully*) whereby deponent was greatly injured; and that the damage said plaintiff has sustained amounts to ——— dollars, at least.

II. (*Allege suit brought, as in Paragraph III, of Form* 22.)

[Jurat.] [Signature.]

FORM NO. 24.—AFFIDAVIT REFERRING TO COMPLAINT ANNEXED.

[Title of Cause.]

[Venue.]

C. D., the plaintiff above named, being duly sworn, says:

I. That a sufficient cause of action exists in his favor against the defendant, E. F., the grounds of which appear by the sworn complaint in this action, hereto annexed, all the statements contained in which are true, to the knowledge of this deponent, (*if deponent has not personal knowledge of all the facts, add* "except as to the allegations that, etc., as to which," *here state belief and sources of information, and indicate reason why informant's affidavit is not given.*

II. (As in Form 22.)

III. (As in Form 22.)

FORM NO. 25.—THE SAME; BY A THIRD PERSON.

[Title of the Cause.]

[Venue.]

G. H., being duly sworn, says:

I. That he is the agent of the above named plaintiff, C. D., at ——, for ——, and that the above named defendant, E. F., is justly indebted to said plaintiff, in —— dollars, for (continue as in 22d Form.)

FORM No. 26, IN ACTION TO RECOVER POSSESSION OF PERSONAL PROPERTY.

(Commencement as in preceding forms.)

I. That he is plaintiff above named; that a sufficient cause of action exists in his favor against the defendant above named, arising out of the following facts; *here state facts constituting cause of action, or annex complaint and proceed as follows:* as more clearly appears by the complaint hereto annexed, all the allegations of which are true to the personal knowledge of deponent, except, &c.)

II. That the above entitled action has been commenced, and is now actually pending in the Court for the recovery of said personal property (or the personal property mentioned in said complaint.)

III. That on the —— day of —— 18—, the annexed summons was issued herein to the Sheriff of the County of ———, for services, together with the requisition herein endorsed, was on the same day delivered, when with the requisite undertaking, for the purpose of obtaining an immediate delivery of such property, pursuant to the provisions of the Code of Procedure; that since the commencement of said action, said property has been removed (or concealed, or disposed of) by said defendant, so that it cannot be found or taken by said Sheriff, as more clearly appears by his returns hereto annexed, and that as deponent believes, it has been so removed with the intent that it should not be so found or taken by said Sheriff, which belief is founded on the following facts, namely: (*state in detail the facts showing a removal of the property with an intent that it should not be found or taken, or with intent to deprive the Sheriff of the benefit thereof.*

(Jurat.) (Signature.)

FORM No. 26—SHERIFF'S OR CONSTABLE'S RETURN.

[Title of Cause.]

[Venue.]

I hereby return that the within mentioned property has been concealed (or removed, or disposed of) so that it cannot be found or taken by me.

Date. Official Signature of Sheriff or Constable.

FORM No. 27—UNDERTAKING IN ARREST.

THE STATE OF SOUTH CAROLINA, } Court.
COUNTY OF ———— }

[Title of Cause.]

[Date.]

Whereas, the above named plaintiff has applied (or is about to apply) for an order of arrest in this action against the above named E. F., defendant, in one of the cases provided by law; Now, therefore, G. H.,

of ——, and I. J., of ——, undertake in the sum of —— dollars, that if the said defendant recover judgment herein, the plaintiff will pay all costs that may be awarded to the said defendant and all damages which he may sustain by reason of his arrest in this action.

(Signed, &c.) (Signatures.)

FORM NO. 28—JUSTIFICATION.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——— }

Personally appeared G. H. and I. J., who being duly sworn, severally, says, each for himself: That he is a resident and householder (or freeholder) in this State, and worth ——— dollars, (*double the sum specified in the undertaking*) over all his debts and liabilities, and exclusive of property exempt from execution.

G. H. [L. S.]
I. J. [L. S.]

Sworn to before me this —— day of ——, 18—. A. B.,
Trial Justice.

(This justification may be by separate affidavits, or one, only, of the surety may justify.)

FORM NO. 29.—INDORSEMENTS OF APPROVAL.

I approve the within undertaking, and the sufficiency of the sureties therein named.

(Date) (Signature of Judge,
Trial Justice or Clerk of Court,
Before whom this application for order of arrest is made.)

FORM NO. 30.—ORDER OF ARREST.

(Title of Cause.)

The people of the State of South Carolina.

To —— Sheriff (or Constable) of County of —— in the said State,

You are hereby commanded forthwith to arrest the above named E. F., and to hold him to bail in the sum of —— dollars.

(Signature of Officer granting Order.)

(Signature of Plaintiff's, Attorney, if any.)

(Date.)

FORM NO. 31.—RETURN OF ARREST.

(Venue.)

I have taken and arrested the within named E. F., as required by the within order.

(Signature.)

Sheriff (or Constable) of —— County,

FORM NO. 32.—ARREST AND IMPRISONMENT FOR WANT OF BAIL, AS ABOVE, CONTINUING.

Who remains imprisoned in the Common Jail of —— County, in my custody, for want of bail.

FORM NO. 33.—NOT FOUND.

(Venue.)

The within named E. F., is not found in my County.

(Signature.)

Sheriff (or Constable) of —— County.

III.—ARREST IN CRIMINAL CASES.

1ST.—WHO MAY BE ARRESTED.
2D.—AT WHAT TIME.
3D.—IN WHAT PLACES.
4TH.—WHO MAY ARREST AND BY WHAT AUTHORITY.
5TH.—MANNER OF ARREST.
6TH.—WHAT IS TO BE DONE AFTER ARREST.

1ST.—WHO MAY BE ARRESTED.

Generally all persons properly accused of a crime or misdemeanor, may be arrested, except ambassadors and other public ministers.

Those who go about offensively to the terror of the people, and such as utter menacing or threatening speeches; those who lead idle and vagrant lives, without having any visible means of support, who keep company with persons of scandalous reputation, or otherwise dangerous, disreputable and disorderly persons.—Gen. Stat., 195; 4 Bl. 2, 291; 2 How., 76.

The being found in such circumstances as induce a strong presumption of guilt, as coming out of a house wherein murder has been committed, with a bloody knife in one's hand, or being found in possession of any part of goods stolen, without being able to give a probable account of coming honestly by them. 2 How. 76.

The being pursued by hue and cry. (*Ibd.*)

2D.—AT WHAT TIME.

The arrest may be made either in the night or day time, and for treasons, felons, and breaches of the peace, on Sundays as well as on other days. Wallace's R. 23.

3D.—IN WHAT PLACE.

No place affords protection to offenders against the criminal law; a man may therefore be arrested in his own house, which may be broken open for the purpose of making the arrest.

4th—WHO MAY ARREST AND BY WHAT AUTHORITY.

Who may Arrest.—(1) By a peace officer, or—
(2) By a private person.

A Peace Officer.—By a peace officer, by process out of some Court, or warrant from a Trial Justice, which is the proper course, when the circumstances will permit, and without a warrant whenever a crime or misdemeanor is committed in his view.

By a private person who is present, when a felony is committed, or dangerous wound given. 2 How. 72; 4 Bl. Com. 292; I. Hale 587.

It shall be lawful for any citizen to arrest any person in the night time, by such efficient means as the darkness and the probality of his escape render necessary, even if his life should be thereby taken, in cases where he has committed a felony, or has entered a dwelling-house with evil intent, or has broken, or is breaking into an out-house with a view to plunder, or has in his possession stolen property, or, being under circumstances which raise just suspicion of his design to steal or commit some felony, flees when he is hailed. Rev. Stat., C., cxxx viii.

A private person.—Private persons may also, in this State, arrest without a warrant a party who has committed a felony in another State, and *prima faci*, evidence of the fact, as the proclamation of the Governor's or proof of true bill found, is sufficient to warrant the arrest. State *vs.* Andrews, 1 Hill, 327.

A Trial Justice may, verbally, authorize any one to arrest another who may be guilty of an actual breach of peace in his presence. 2 How. 14.

5th.—MANNER OF ARREST.

With speed.—The officer to whom a warrant is directed, ought, with all speed and secrecy, to find out the party, and then to execute the warrant. Dalt. C. 169.

The arrest must be by corporal touching when there is resistance; but where the prisoner quietly submits, corporal touching is not necessary. McCracken *vs.* Ansley, 4 Strob., 5.

The amount of force which an officer may lawfully use in making an arrest is so much as is necessary to effect his object, even if it extend to killing the defendant. 2 H. H., 119., Golden *vs* State, 1 Rich., S. C., 292.

6th.—WHAT IS TO BE DONE AFTER THE ARREST.

When a private person hath arrested a felon, or one suspected of felony, he should, as promptly as convenient, deliver him to a constable to carry before a Trial Justice, or carry him there himself.

When an arrest is made by virtue of a warrant, the officer should bring the party according to the directions of the warrant.

But if the time be unseasonable, as in, or near night, or if there be present danger of a rescue, or if the party be sick, he may be imprisoned

or otherwise secured, till the next day, or such time as it may be reasonable to bring him.

When a prisoner is brought before a Trial Justice, he is in law still in custody, till the Trial Justice discharge, bail, or commit him. 1 H. H., 582, 589; 2 H. H., 95, 112, 120.

FORM NO. 34.—ARREST WARRANT AND AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ————.

By A. B., Trial Justice in and for the said County in the said State.

To any Lawful Constable:

Whereas complaint upon oath has been made unto me by C. D., that at —— in the County and State aforesaid, on the day of —— A. D. 18—, one E. F., (*here insert the offence for which the warrant is issued for the arrest of the defendant.*)

These are, therefore, to command you to apprehend the said defendant E. F.,, and bring him before me to be dealt with according to law.

Given under my hand and seal the day of —— A. D. 18 —.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ————.

Personally appeared before me, A. B., a Trial Justice in and for the said County and the said State, C. D., who being duly sworn says: (*Here follow the facts constituting the offence charged, and the names of the witnesses.*)

(Signature of Prosecutor.

Sworn to before me this —— day of —— A. D. 18 —.

A. B.,
Trial Justice.

ARSON.

Definition.—Arson, at common law, is the malicious and voluntary burning of the house of another by night or by day.

By Statute, this crime is extended to the burning of any house, outhouse, building or shed or erection within two hundred yards of any dwelling-house, and are appurtenant to it; also, the wilful and malicious setting fire to and burning any Court House or other public building, whether owned by the State or a corporation, or a building owned by an

individual or individuals, and kept or let for public meeting or exhibitions, barn, stable, coach house, gin house, store house, ware house, grist or saw mill, railroad depot, coach or cotton factory, or any other house used for manufacturing purposes, of whatever name or kind, or setting fire to or burning any house habitually used for public religious worship, whether such setting fire to or burning be in the night or day time. Gen. Stat., c. cxxix., S. 1 and 32, *p.* 714 and 729.

1st.—What Constitutes Arson.
2d.—Punishment.
3d.—Form of Arrest Warrant For.

1st.—WHAT CONSTITUTES ARSON.

In order to make the crime of arson complete, there must be
First, A burning of the house or some part of it.
Second, The burning must be wilful and malicious.
Third, It must be the house of another.
1 Hale, P. C. 568; 2 Russ. 487; 4 Bl. Com., 221.

First, of the Burning: There must be an actual burning of the whole or of some part of the house. A bare intention or even an actual attempt to burn a house by putting fire into it, is not arson if no part of it be burned; but it is sufficient, if any part be consumed, however small it may be.

Second, Burning must be wilful and malicious: No negligence or mischance will amount to such burning. But the wilful or malicious burning need not correspond to the precise intent of the party. If A have a malicious intent to burn the house of B, and in setting fire to it, burn the house of C, though the house of B escape, this will be held in law to be the wilful and malicious burning of the house of C. And such wilful burning of the house of another, may be the means of setting fire to the party's own house, and this, though it should appear that the primary intention of the party was only to burn his own house.

Third, Must be the house of another: The burning of a party's own house, if no other be burned thereby, is not arson; but if near to other houses, or in a crowded city, it is a great misdemeanor. But if the house be that of another, and the party have a mere possession, without an interest therein, the burning such house is arson.—2 Russ, 488.

2d.—PUNISHMENT.

The punishment for arson is death by hanging, in the same form and manner as is now provided by law for wilful murder: *Provided, however,* That in each case where the prisoner is found guilty the jury may find a special verdict, recommending him to the mercy of the Court, whereupon, the punishment shall be reduced to imprisonment in the Penitentiary with hard labor during the whole lifetime of the prisoner.—16 Stat., 631.

The punishment being death, a Trial Justice therefore may not admit to bail a person charged therewith.

3d.—Form No. 35.—Arrest Warrant for Arson.

THE STATE OF SOUTH CAROLINA,
County of ———— }

A. B., Trial Justice, in and for the said County, in the said State.

To any Lawful Constable:

Whereas, complaint on oath has been made unto me by (C. D.) that at ————, in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E. F. did wilfully and maliciously set fire to and burn the (*dwelling or other house*) of him, the said C. D.

These are, therefore, to command you to apprehend the said defendant (E. F.), and bring him before me, to be dealt with according to law.

Given under my hand and seal, this —— day of ———, A. D. 18—.

A. B., [L.S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
County of ———— }

Personally appeared before me, (A. B.,) a Trial Justice in and for the said County and the said State, (C. D.,) who, being duly sworn, says: That at (*here recite the above allegation, together with what other facts are material to the case.*

That X. Y. and Z. are material witnesses thereto. C. D.

Sworn to before me, this —— day of ———, A. D. 18—. A. B.,
Trial Justice.

ASSAULT AND BATTERY.

(See Concealed Weapons and Jurisdiction.)

1st.—What is an Assault.
2d.—What is a Battery.
3d.—In What Cases Assault and Battery May be Justified.
4th.—Punishment.
5th.—Requisites of Affidavit.
6th.—Form of Arrest, Warrant and Affidavit.

1st.—WHAT IS AN ASSAULT.

What is an Assault.—An assault is an unlawful attempt or offer with force or violence to do corporal hurt to another, whether from malice or wantoness; for example, by striking at him or even holding up the

fist at him in a threatening or insulting manner, or with other circumstances as denote at the time an intention, coupled with a present ability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it. No words, though, however provoking, will amount to an assault, as where A. laid his hand on his sword and said: "If it were not assize time, I would not take such language from you," was holden to be no assault, on the ground that he did not design to do the other party any corporal hurt at that time.

Indecent Liberties.—The taking indecent liberties with a female without her consent, is an assault, so also the exposing the person of another to the inclemency of the weather.—1 Russ. 605.

2d.—WHAT IS A BATTERY.

When the injury is actually inflicted it amounts to a battery. Any injury, whatsoever, be it ever so small, being actually done to the person of a man in an angry, revengeful, rude or insolent manner, such as spitting in his face or any touching him in anger or violently jostling him out of the way, is a battery. For every man's person is sacred and the law prohibits any meddling therewith in the slightest manner.—1 Russ., 605.

Need not be Effected Directly.—The injury need not be effected directly by the hand of the party. Thus there may be assault by encouraging a dog to bite, by riding over a person with a horse, or by wilfully or violently driving a cart against the carriage of another, thereby causing bodily injury to the person travelling in it.

Inciting Others.—Any one who incites another to commit an assault and battery, is himself guilty of the offence, if it be committed. State *vs.* Lymburn, 1 Brev. R. 397. Neither is it necessary that the assault should be immediate, as where a defendant threw a lighted squib into a market place, which being tossed from hand to hand, at last hit the plaintiff in the face and put out his eye, this was adjudged to be an assault and battery.

Intention.—Whether an act should amount to a battery must, in every case, be collected from the intention. Thus, if one person lay hands on another to prevent a breach of the peace, or to separate him from another with whom he is fighting, it is not a battery; or, if two consent to play at cudgels and one happen to hurt the other, it will not amount to a battery.

3d.—IN WHAT CASES ASSAULT AND BATTERY MAY BE JUSTIFIED.

Words no Justification.—No words will justify an assault, nor will an assault nor even a blow justify an enormous battery.—State *vs.* Wood, 1 Bay, 351; State *vs.* Quinn, 2 Tr. Con. 694.

Self Defence.—Yet if the defence be proportionate to the aggression, a party may justify in defence of his person, wife, servant, master, parent or child.

Entry of House.—A man may use force to put another out of his house, if he remain after being desired to leave. Yet he must use only such force as is necessary to put him out, and he may not inflict a violent battery.—State *vs.* Lazarus, 1 McC. 34.

Request to Depart.—In any trespass or breach of a close, without violence, a party cannot justify an assault without a request to depart; but if the entry be with violence, it may be opposed at once with violence.—Green *vs.* Goddard, 2 Salk., 641.

4th.—PUNISHMENT.

Assault and battery is a misdemeanor, and the punishment is by fine and imprisonment.

The party injured may recover damages for assault and battery in a civil action, which must be brought within two years.

No Trial Justice can have cognizance of a civil action for assault and battery, where the damages claimed exceed one hundred dollars.—Code, Sec. 81.

Any person convicted of any assault, or assault and battery, committed by shooting with any-fire arm, on the street or any incorporated city or town, or in any place of public resort, shall be punished by fine of not less than one hundred dollars, or more than one thousand dollars, or imprisonment for not less than twelve months, or both, in the discretion of the Court.—16 Stat. 687.

Whoever shall make an assault upon another person with any deadly weapon, carried concealed about the person, every such person, upon conviction, under indictment, shall be fined not less than two hundred, and not more than two thousand dollars, and shall be imprisoned for a period not exceeding six months, at the discretion of the Court, and shall, moreover, be required by the Court to find sureties for the peace and for good behavior, for one year after the termination of such imprisonment.—Gen. Stat. C. cxxviii, S. 11, p. 710.

5th.—REQUISITES OF AFFIDAVIT

The affidavit should state concisely the time, place, and manner of the assault and battery, the christian and surnames of the parties. Must show that it was done without sufficient cause or provocation, and if the battery be aggravated, the particulars thereof should be stated; otherwise the party might be admitted to light bail.

FORM NO. 36.—ARREST WARRANT AND AFFIDAVIT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ————. }

By A. B., Trial Justice in and for the said County in the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at ———, in the County and State aforesaid, on the —— day of ———,

A. D. 18—, one E. F., without just cause or provocation, did assault and strike him, the said C. D.

These are, therefore, to command you to apprehend the said defendant E. F., and bring him before me to be dealt with according to law.

Given under my hand and seal this —— day of ———, A. D. 18—.

A. B. [L. S.]

Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ————.

Personally appeared before me, A. B., a Trial Justice in and for the said County of the said State, C. D., who being duly sworn, says: That at ———, in the County and State aforesaid, on the —— day of ———, A. D. 18—, E. F., without just cause or provocation, did assault and strike, (if violent, did violently assault, &c.,) him, the said C. D.

That, &c., are material witnesses thereto.

C. D.

Sworn to before me this —— day of ———, 18—.

A. B.

Trial Justice.

ASSEMBLIES.

1ST. RELIGIOUS ASSEMBLIES, (DISTURBANCE OF.)
2D. UNLAWFUL ASSEMBLIES.

1ST.—OF RELIGIOUS ASSEMBLIES.

A religious assembly is a congregation of persons of any sect, creed, or persuasion whatsoever, for the worship of Almighty God, and such assemblies are under the protection of the law.

The offences which may be committed against such are:

First.—The wilful and malicious disturbance or interruption of the same during worship, or

Second.—The entering such meeting in a state of intoxication, or

Thirdly.—The using or selling spirituous liquors, or using blasphemous language at or near such place of meeting.

These offences are indictable and punishable by a fine of not less than twenty, or more than one hundred dollars, or imprisonment for a term not exceeding one year, or less than thirty days, or both, or either, at the discretion of the Court.—15 Stat., 352.

2D.—UNLAWFUL ASSEMBLIES.

An unlawful assembly or the meeting of three or more persons, to do an unlawful act, although they may not carry their purpose into execution. No assembly, though of a man's friends in his own house, for its

defence against those who threaten to make an unlawful entry, or for the defence of his person against such as threaten to beat him in his own house, is not an unlawful assemblage, as a man's house is looked upon as his castle.

The assembly of one's friends under any other circumstances, however, is unlawful, as he may demand sureties for the peace of such as menace his personal safety, and not resort to methods which must result in tumult and disturbance of the public peace. It differs from a riot or rout, in that, in the latter cases, some act is done besides the simple meeting.

The punishment is by fine and imprisonment, in the discretion of the Court.

ATTACHMENT FOR CONTEMPT.

A contempt is punishable by attachment of the person and commitment to prison, to which a fine may also be added.

Every Trial Justice has power to enforce the observance of decorum in his Court while holding the same; and may punish, as for a contempt, by fine and imprisonment, either or both; not exceeding twenty dollars fine, and twelve hours imprisonment, any person who shall, in the presence of the Court, offer an insult to himself or a juror, or who shall be wilfully guilty of any undue disturbance of his proceedings while sitting officially.—Gen. Stat., C. xxv, S. 33, p. 211.

A Magistrate may punish for any contempt towards him while engaged in his official duties.—State *vs.* Johnson, 1 Brev., 155.

A Trial Justice may punish, as for a contempt, by imprisonment for one day, as well as a fine not exceeding ten dollars, any witness who shall neglect or refuse to attend the Court of Trial Justice, or, attending, shall refuse to give evidence without good cause shown.—Gen. Stat., C. xxv, S. 36, pp. 201 and 202.

ATTACHMENT FOR DEBT.

Attachment for debt is a process against the goods and chattels of a defendant, issued by a Court of competent jurisdiction, commanding the Sheriff, Constable, or other proper officer to seize the same, in whatever hands they may be found, to satisfy the demand which the plaintiff has against him.

1st.—Attachment—by Whom Granted.
2d.—Whose Property May be Attached.
3d.—When Attachment May be Granted.
4th.—The Affidavit.
5th.—Security in Obtaining Attachment.
6th.—The Warrant—to Whom Directed, etc.
7th.—The Property to be Attached, and the Lien Thereby Created.
8th.—Proceedings After Attachment.
9th.—Judgment—How Satisfied.
10th.—Discharge of Attachment, and Undertaking on Part of Defendant.
11th.—Forms.

1st.—ATTACHMENT—BY WHOM GRANTED.

A warrant of attachment must be obtained:

1. From a Judge or Clerk of the Court; or,
2. From a Trial Justice, in which, or before whom, the action is brought; or,
3. From a Circuit Judge.—Code, Sec. ~~251~~ 249.

2d.—WHOSE PROPERTY MAY BE ATTACHED.

The property of the following parties may be taken upon attachment:

1. Foreign corporations.
2. Non-residents of this State.
3. An absconding or concealed defendant.
4. Any person removing property from the State, or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete the same, with the intent to defraud creditors.
5. Any domestic corporation doing likewise.—Code, Sec. 250.

Process by attachment will not lie against a non-resident, executor, or administrator, to enforce a claim against him in that capacity.—Weyman *vs.* Murdoch, Harper, 125; 2 Dal. 73 and 97; Tillinghast & Shearman's N. Y. Prac., 651.

If he becomes personally liable, an attachment may issue.

A debt due a mechanic is the subject for an attachment, under Sec. 252 of the Code; McKelvey *vs.* S. C. R. R. Co., 6 Rich., S. C., p. 446.

3d.—WHEN ATTACHMENT MAY BE GRANTED.

As to Time.—By Section 250 of the Code, the action shall be deemed commenced when summons is issued; hence, an attachment cannot be had until a summons is issued, though both the attachment and summons may be issued together to the Sheriff.

A warrant of attachment can only be granted in any action arising for the recovery of *money*, or for recovery of property, whether real or personal, and damages for the wrongful conversion and detention of personal property, or, in an action for the recovery of damages for injury done to either person or property.—A. A. 1879, No. 39; Amend. to Sec. 250 of Code. And, may issue whenever it appears, by affidavit, that a cause of action exists against the defendant, and that such defendant is—

1. A. foreign corporation; or,
2. Not a resident of this State; or,
3. Has departed from the State, with intent to defraud his creditors or to avoid the service of a summons; or,
4. Conceals himself therein with a like intent; or,
5. Has removed from the State, assigned, disposed of, or secreted any of his, or (if a corporation) its property, or is about to do so, with intent to defraud creditors.—Code, Sec. 252.

4th.—THE AFFIDAVIT.

The application must be founded upon an affidavit, which must show that a cause of action exists against the defendant, specifying the amount of the claim, and the grounds thereof, and must show that the case falls within one of those heretofore specified.

The facts of the affidavit should be sworn to positively by the persons having actual knowledge of them. Code Sec. 252; Hagood *vs.* Hunter, 1 Mc., 571; Tillinghast & Shearman, 656.

An affidavit in the disjunctive of two facts is bad, although either positively deposed might be sufficient. Goss *vs.* Gowery, 5th Rich., 477.

Filing.—The affidavit must be filed with the Trial Justice, before whom the action is to be tried, within ten days after the warrant is issue. Code.

5th.—SECURITY IN OBTAINING ATTACHMENT.

Before issuing the warrant, the Trial Justice shall require a written understanding on the part of the plaintiff, with sufficient security, to the effect, that if the defendant recovers, judgment, the plaintiff shall pay all costs that may be awarded to the defendant, and all damages which he may sustain, be reason of the attachment, not exceeding the sum specified in the undertaking, which shall be, at least, twenty-five dollars. Code Sec., 253.

6TH.—THE WARRANT TO WHOM DIRECTED, &c.

The warrant should be signed be the Trial Justice; the attorney if any, may also sign it, and must be directed to the Sheriff, or any lawful constable of any County in which any property of the defendant may be, no return day need be inserted. Several warrants may be issued at the same time to the Sheriffs or Constables of different Counties. It should require the Sheriff or Constable, to attach and safely keep all the property of the defendant within his County, or as much thereof as may be sufficient to satisfy the plaintiff's demand, together with cost and expenses.

The amount of the demand must be stated in accordance with the complaint, with costs and expenses. Code, Sec., 254.

7TH—THE PROPERTY TO BE ATTACHED AND THE LIEN THEREBY CREATED.

All the real and personal estate of the defendant, except articles exempt from execution by the Constitution, is liable to be attached; including money bank-notes, and books of account, vouchers, and papers, relating to his property, debts, credits, and effects, and all evidences of his title to real estate. Code Sec., 255.

The attachment is a lien subject to all prior liens, and binds the real estate attached from the date. Attachments lodged on same day take rank together. Ibd.

It takes precedence of a junior judgment. Gore & Davenant *vs.* McDaniel, 1 Mc. 480.

Personal property must be taken into actual possession by the Sheriff or Constable, in order to create any lien upon it.

8TH.—PROCEEDINGS AFTER ATTACHMENT.

The sheriff or constable to whom the warrant is directed, must immediately on making the seizure, with the assistance of two disinterested freeholders, make a just and true inventory of the property so seized, and of the books, vouchers and papers taken into his custody, stating therein the estimated value of the several articles of personal property, and enumerating such of them as are perishable; which inventory, after being signed by the sheriff and appraisers, must within ten days after such seizure, be returned to the Trial Justice who issued the warrant. Code, Sec. 256. Perishable property must be sold and the proceeds disposed of as if the property had remained unsold. If the property is incapable of manual delivery, attachment shall be made by delivering a copy of the warrant of attachment with whoever has it in charge.—Ibid, Sec. 257, 258, and 259.

9TH.—JUDGMENT, HOW SATISFIED.

In case judgment shall be entered for the plaintiff, the sheriff or constable may, by order of the Trial Justice, sell all goods and effects so attached towards the satisfaction of the plaintiff's judgment, as if the same had been taken by execution. Code, Sec. 261.

10TH.—DISCHARGE OF ATTACHMENT, AND UNDERTAKING ON PART OF DEFENDANT.

After the defendant has appeared in the action, he may apply to the Trial Justice who issued the warrant, for an order to discharge the same. Upon such application, the defendant shall deliver to the Trial Justice, an undertaking executed by at least two sureties, who are residents and freeholders or householders in this State, approved by such Trial Justice, to the effect that the sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount claimed by the plaintiff in his complaint. If it shall appear by affidavit that the property attached be less than the amount claimed by the plaintiff, the Trial Justice may order the same to be appraised, and the amount of the undertaking shall then be double the amount so appraised. Where there is more than one defendant, and several property of either of the defendants has been seized by virtue of the order of attachment, the defendant whose several property has been seized, may deliver to the Trial Justice an undertaking in accordance with the provisions of this Section, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against such defendant.

And all the provisions of this Section applicable to such undertaking shall be applicable thereto. Code, Sec. 264, 265.

11TH.—FORMS.

FORM NO. 37.—AFFIDAVIT TO OBTAIN ATTACHMENT.

General Form.

[Title of Cause.]

THE STATE OF ——— ———, }
COUNTY OF ——— ———. }

C. D., the plaintiff above named, being duly sworn, says:

I. That X. Y., the above named defendant, is justly indebted to deponent on the sum of —— dollars, for (*here state the cause of action,*) and deponent believes he is justly entitled to recover said sum.

II. (*Here state facts which bring the case within one of the classes in which the Statute allows an attachment.*) (See Sub-division, 2.)

III. That the said plaintiff has commenced an action in this court, by issuing the summons hereto annexed, against said X. Y., upon the cause above stated.

(Jurat.) (Signature.)

FORM NO. 38.—AFFIDAVIT WHEN DEFENDANT IS A FOREIGN CORPORATION.

(As in Form 1, inserting the following in the place of paragraph II):

II. That the defendants are a foreign corporation, created under the laws of the State of ——, having their place of business in —— in that State.

III. That the defendants have property in this State at ——, consisting of (describe property.)

IV. That the plaintiff is a resident of this State, to wit, of the town of —— in the county of ——.

(Or IV. That the subject of the action is situated within this State as appears by the annexed complaint.)

FORM NO. 39.—AFFIDAVIT WHEN DEFENDANT HAS DEPARTED FROM THIS STATE TO DEFRAUD CREDITORS, OR TO AVOID SERVICE.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——— ———.

Personally appeared A. B., who being duly sworn, says:

I. (State cause of action thus:) On the —— day of —— 18—, at ——, deponent sold and delivered to X. Y., of ——, sundry parcels of dry goods, of the value of —— dollars, for which he has not paid.

II. Deponent is about to commence an action in this court against the said X. Y., and has a summons therein.

III. The said X. Y. has left this State and gone to ——.

IV. Deponent is informed by C. D., and believes that the said X. Y. stated to him on the —— day of ———, 18—, that "he meant to get out of the way for awhile, and let the storm blow over;" meaning that he wished to avoid his creditors.

V. That the said C. D., being the clerk of X. Y., refuses to make his affidavit.

(Jurat.) (Signature.)

FORM NO. 40.—ATTACHMENT BOND.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——— ——— } *Office of Trial Justice.*

Know all men by these Presents: That in pursuance of the Acts of the General Assembly of this State, regulating attachments, C. D. and E. F. are held and firmly bound unto X. Y. in the full and just sum of ——

dollars, to be paid unto the said X. Y., his (or her) certain attorneys, executors, administrators or assigns. To which payment well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, or assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated —— day of ———, in the year of our Lord one thousand eight hundred and ——, and in the —— year of American Independence.

Whereas, C. D. about to issue and sue out of the Court of Common Pleas, for the County aforesaid, a warrant of attachment, to attach all real estate of the said X. Y., and all his (or her) personal estate, including money and bank notes, except such real and personal estate as are exempt from attachment, levy and sale by the Constitution.

And whereas, under and by virtue of the provisions of law in relation thereto, it is directed and prescribed, that before issuing the warrant, the Judge, Trial Justice, or Clerk shall require a written undertaking on the part of the plaintiff, with sufficient surety to the effect that if the defendant recover judgment, or the attachment be set aside by order of the Court, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least twenty-five dollars.

Now, therefore, the condition of the above obligation is such, that if the said defendant recover judgment in the said case, or the attachment be set aside by order of the Court, and the said C. D. and E. F. shall pay, or cause to be paid, to the said X. Y., his (or her) certain attorneys, executors, administrators, or assigns, all costs that may be awarded to the said defendant, and all damages which he (or she), the said defendant, may sustain by reason of the attachment about to be issued as aforesaid, then the above obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of ——.

(Signature.) [L.S.]

(*Name of witnesses.*) [L.S.]

FORM NO. 41.—WARRANT OF ATTACHMENT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ———— }

To any Constable of the County of ——, Greeting:

Whereas, an application has been made to A. B., Trial Justice, by C. D., plaintiff, for a warrant of attachment against the property of X. Y., defendant, and it appearing by affidavit, that a cause of action exists against the said X. Y. for the sum of —— dollars, and that the said X. Y. (*state the facts and clause of the Statute relied on*), and the plaintiff having also given the undertaking required by law:

Now, you are hereby commanded, that you attach and safely keep all property of the said X. Y. within your county, or so much thereof as may be sufficient to satisfy the said plaintiff's demand of ——— dollars, together with all costs and expenses, and that you proceed herein in the manner required of you by law.

Dated at ———, this —— day of ———, in the year one thousand eight hundred and ———.

A. B.,
Trial Justice.

FORM NO. 42.—CONSTABLE'S RETURN TO ATTACHMENT.

I, M. N., Constable of the County of ———, hereby return, that by virtue of the within attachment, I have seized and taken into my possession, the property of the defendant within named, specified in the inventory hereto annexed, and appraised the property therein specified at the sums mentioned in the annexed inventory.

(Date.) Signature of M. N.,
Constable.

FORM NO. 43.—INVENTORY OF PROPERTY ATTACHED.

(Title of Cause.)

I, M. N., Constable of the County of ———, and O. P. and O. R., two disinterested freeholders of said County, hereby certify that the following is a true inventory of all the property seized by me, the said Constable, on a Warrant of Attachment, issued in the above entitled action, by A. B., Trial Justice, together with a statement of the books, vouchers, and papers taken into the custody of said Constable on said warrant, and the value of such article of personal property, and also a true statement of such articles thereof as are perishable, as the same has been appraised by us.

(*List of articles of personal property, setting value opposite each.*)

And we further certify that the said ———, is perishable property.

(Date.) Signature of Freeholders and Constable.

FORM NO. 44.—ORDER FOR SALE OF PERISHABLE PROPERTY.

(Title of Cause.)

It appearing to me, that by the inventory returned to the Warrant of Attachment, issued by me in this action, a portion of the property seized by M. N., Constable, under said warrant, to wit: (specifying property,) is perishable.

Ordered, that the portion of the property so specified in the inventory as perishable, be sold by said Constable at public auction, after (*such time as may be reasonable under the circumstances,*) ——— days, previ-

ous notice of the time and place of such sale being given by him in writing, posted in three or more public places.

(Date.) A. B.,
Trial Justice.

FORM NO. 45.—NOTICE OF MOTION TO DISCHARGE ATTACHMENT.

(Title of Cause.)

Take notice, that on an affidavit, of which a copy is annexed, and on all the papers filed and served in this action, the undersigned will move before A. B., Trial Justice, at his office in ———, on the day of ———, 18—, at — o'clock, to discharge the attachment in this action, upon the grounds (*if for irregularity, among others, particularly specifying the irregularity,*) and for such other or further order as may be just, and for the costs of this motion.

(Date.) (Signature.)

(Address to Defendant or his Attorney.)

FORM NO. 46.—THE SAME, ON GIVING SECURITY.

(Title of Cause.)

Take notice, that the undersigned will move before A. B., Trial Justice, at his office in ———, on the —— day of ———, 18—, at — o'clock M., to discharge the attachment in this action, in giving due security.

(Date.) (Signature.)

(Address to Plaintiff's Attorney.)

FORM NO. 47.—ORDER VACATING WARRANT OF ATTACHMENT.

[Title of Cause.]

On (*the notice of this motion, and*) the affidavits of C. D. and E. F., and on motion of defendants counsel, (after hearing counsel for plaintiff); Or, (if *the attachment is sought* to be discharged on security.) That the defendant having appeared in this action, and having given sufficient security for the plaintiff's demand:

Ordered, that the attachment granted by me against the property of X. Y., on the —— day of ———, 18—, be discharged; and that the Sheriff return to him all the property which he has taken under the same, and the proceeds thereof.

(Date.) A. B.
Trial Justice.

FORM NO. 48.—UNDERTAKING IN DISCHARGE OF ATTACHMENT.

[Title of Cause.]

[Date.]

Whereas, the property of the above named X. Y. has been attached in this action by M. N., one of the Constables of the County of———; Now, therefore, we, E. F. and G. H., residing at ———, in the State and County aforesaid, undertake that if the attachment be so discharged, we will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant, X. Y., in this action, not exceeding ——— dollars.

[L. S.]

(Signatures.) [L. S.]

In the presence of
(Witness)

FORM NO. 49.—AFFIDAVITS OF SUFFICIENCY.

STATE OF ——
COUNTY OF ——

E. F., one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State, and is worth the sum of (*double amount of undertaking*) —— dollars, over and above all his debts and liabilities, and exclusive of property by law exempt from execution.

(Jurat). (Signature.)

(Other subscribers in same manner as above.)

FORM NO. 50.—ACKNOWLEDGMENT.

STATE OF ——
COUNTY OF——

I certify that on this —— day of ——, 18—, E. F. and G. H., personally appeared before me and severally acknowledged that they executed the above undertaking for the uses and purposes therein named.

A. B.
Trial Justice.

FORM NO. 51.—INDORSEMENT OF APPROVAL.

I approve the within undertaking and the sufficiency of the sureties therein named. A. B.,
Trial Justice.

(Date.)

ATTEMPT (TO COMMIT CRIME.)

An attempt to commit a felony is, in many cases, a misdemeanor; and the solicitation of another is a sufficient act to constitute the offence.

In such cases, however, attempts to murder, commit rape, and so forth, the party may be indicted for assault with intent to commit such offence.—1 Russ. 44; 6 C. and p. 368; 7 Comm. Rep. 54.

ATTORNEY AND POWER OF ATTORNEY.

1st.—Who is an Attorney and how Appointed.
2d.—Who may act as Attorney.
3d.—Authority of Attorney and Revocation of.
4th—Form of power of Attorney.

1st. WHO IS AN ATTORNEY AND HOW APPOINTED.

Who is.—An attorney is a person appointed by another to do any thing in his place or stead, and by the term is most frequently meant attorney at law; but its use here is restricted to what is most frequently meant by the term agent.

How appointed.—An attorney may be constituted either by parol or by deed, and one person may constitute another, his agent or attorney in a certain line of business, by the recognition of former acts done by such attorney, in such business; and the suffering of a party to hold himself out as your attorney, without consideration, will be regarded as a proof of appointment; but generally when the act to be done by the attorney requires a deed, the appointment of such must be done by deed also. 1 Lev. 34, 37.

2nd.—WHO MAY ACT AS ATTORNEY.

A naked authority may be delegated to any person:

Thus, married women, infants, aliens, &c., may be attorneys; and in regard to the ordinary transactions that are usually done by the wife, the law will presume the assent of the husband. But authority coupled with an interest and not collateral to it, cannot be executed by an infant or a married woman. 1 Lev., 32.

3d.—AUTHORITY OF ATTORNEY, AND REVOCATION OF.

The authority of an attorney is either general or special, according to the nature of the appointment. If a person be a general agent, the principal is bound by his acts, provided they are in the general scope of the authority. But an agent constituted for a particular purpose, cannot.

bind the principal by any act in which he exceeds his authority. 1 Lev. 107. And delegated authority must be pursued strictly, and an act done by an attorney should be done in the name of the principal. Welsh *vs.* Parrish, *et al*, 1 Hill, 155.

Revocation of Authority of.—The authority of an attorney may be revoked by the marriage of the principal, being a single woman, by the death of the principal; and by express revocation, except when executed for valuable consideration, in which case it is irrevocable.

4TH. FORM NO. 52.—POWER OF ATTORNEY.

Know all men by these presents, that —— have constituted, made and appointed, and by these presents do constitute, make and appoint —— true and lawful attorney, for —— and in —— name and stead, and to —— use, to ask, demand, sue for, levy, recover and receive all such sum or sums of money, debt, rents, goods, wares, dues accounts, and other demands whatsoever, which are or shall be due, owing, payable or belonging to —— or delivered from —— any manner of ways or means whatsoever by ——

Giving and granting unto —— said attorney by these presents, full and whole power, strength and authority in and about the premises; to have, use and take all lawful ways and means in —— name for the recovery thereof; and upon the receipts of any such debts, dues, or sums of money aforesaid, acquittance, or other sufficient discharges, for —— and in —— name, to make, seal and deliver, and generally all and every other act and acts, thing and things, device or devices, in the law whatsoever, necessary or needful, to be done in and about the premises for —— and in —— name, to do, execute and perform, as fully, largely and amply, to all intents and purposes, as —— might or could do, if —— personally present; (*or if the matter required more special authority than this herein given*) and attorneys, one or more under —— for the purpose aforesaid, to make and constitute, and again at pleasure to revoke; ratifying, allowing and holding, for form and effectual, all and whatsoever ——said attorney shall do in and about the premises by virtue hereof.

In witness whereof, —— have hereunto set —— hand— and —— seal—.

Dated at ——, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, in the one hundred and —— year of the sovereignty and independence of the United States of America.

—— ——— [L. S.]

Sealed and delivered in the presence of

NOTE.—If the power of attorney be to convey land, it must be witnessed by two witnesses; and, if it is to be used in another State, then it should be sworn to by one of the witnesses, and the official character of the Trial Justice should be certified by the Clerk of the Court of Common Pleas, under the seal thereof, and the certificate of the Judge attached, that such person is the Clerk of the said Court.—1 M. Con. Rep., 280.

AUCTION AND AUCTIONEER.

1st.—Who May Sell at Auction.
2d.—Liability of Purchaser at Auction.
3d.—Liability of Auctioneer.

1st.—WHO MAY SELL AT AUCTION.

Auctioneer to Give Bond.—Every auctioneer or vendue master, before he shall act in such capacity, shall be compelled to give to the Council of the city or town where he may reside, full and ample security for the due and faithful performance of his duty as auctioneer or vendue master, as the case may be.—Gen. Stat., 305.

2d.—LIABILITY OF PURCHASER AT AUCTION.

Every purchaser who shall purchase any lands, houses, cattle, wares, etc., at any public sale in this State, and which purchase shall be entered in the books of the vendue master so selling such property, and who shall refuse to comply with the conditions of the said sale, within seven days thereafter, shall be liable to all losses arising thereon, to the original owner. And the auctioneer may resell such property on the original conditions, giving seven days' notice of said sale, and recover from the non-complying purchaser, at the first ensuing Court having jurisdiction, the expenses and commissions of the second sale, and the deficiency arising from such purchaser's non-compliance.—Rev. Stat. C. Lii, S. 2, p. 305; 1 McM., 453.

But, this is understood of an actual and fair sale at auction; and a party would not be liable, as a purchaser, on a bid withdrawn before the hammer is down.—Dunn & East., 148.

The employment of under-bidders to puff at such sales, will vitiate them, and a purchaser is not bound to comply.

3d.—LIABILITY OF AUCTIONEER.

Property placed in the hands of auctioneers or vendue masters, for either public or private sale, may be recovered of said auctioneers or vendue masters, in the most summary manner, before any Court of competent jurisdiction in the State, by the owners on whose account the property was sold. They are not, however, responsible for the loss of goods or other property occasioned by the act of a public enemy, the act of God, or by any other cause which man could not prevent or foresee.—Gen. Stat. C. Lii, S. 3 and 4, p. 305; 1 McC., 38; 3 McC., 38; 3d McC., 93; 2 Nott & McCord, 435.

BAIL.

Definition.—By bail is understood sureties, given according to law, to insure the appearance of a party in Court. The persons who become surety are called bail.

Power of Bail.—The party thus delivered is regarded as in the custody of the bail, who has power at any time to arrest the said party and surrenders him in discharge of himself.

Bail is either civil or criminal.

I. Bail in Civil Actions.
II. Bail in Criminal Cases.

I.—BAIL IN CIVIL ACTIONS.

1. Of Bail in general.
2. Proceedings upon the bail bond.
3. Deposit with sheriff or constable.
4. Discharge by sheriff or constable.
5. Escape.
6. Rescue.
7. Recapture.
8. Vacating order of arrest.
9. Liability of sheriff or constable.
10. Forms.

1.—OF BAIL IN GENERAL, AND HEREIN OF.

1. The undertaking.
2. Sheriff's return.
3. Excepting to bail.
4. Notice of justification.
5. Qualifications.
6. Disqualifications.
7. Justification.

After arrest, the next proceeding is on the part of the defendant to obtain his discharge, which may be procured—

1. By giving bail.
2. By making a deposit with the sheriff.
3. By discharge of the sheriff without bail.
4. By escape or rescue.
5. By motion to vacate order of arrest.

1.—The Undertaking.

The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times render

himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment thereon. (Code, Sec. 210.)

If the defendant be arrested in an action to recover the possession of personal property unjustly detained, etc., as per sub-division third, of Sec. 202 (Code), the undertaking must also bind the sureties in double the value of the property, as stated in the plaintiffs' affidavit.

1. For the delivery of the property to the plaintiff, if so adjudged.

2. For the payment to him of such sums as may, for any cause, be recovered against the defendant. (*Ibid*, Sec. 234.)

2.—Sheriff's Return.

Within the time limited by the order, the sheriff or constable, must deliver the same to the person by whom it was subscribed, with his return endorsed, and a certified copy of the undertaking of bail. (*Ibid*, Sec. 215.)

3.—Exceptions To Bail.

The plaintiff, within ten days after the return, may serve upon the sheriff or constable, a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff or constable shall be exonerated from liability. (*Ibid.*)

4.—Notice of Justification.

On the receipt of such notice, (of exception to bail,) the sheriff or constable or defendant may, within ten days thereafter, give to the plaintiff, or attorney by whom the order of arrest is subscribed, notice of the justification of the same or other bail, (*specifying the places of residences and occupation of the latter*) before the Trial Justice, at a specified time and place, the time not to be less than five or more than ten days thereafter. (Code, Sec. 216.)

In case other bail be given, there shall be a new undertaking, in the form prescribed on the preceding page. (*Ibid.*)

The giving of notice of justification by the defendant is a waiver of all defects or irregularities in the notice of exception or its service.

(1 Tillinghast & Shear, N. Y. Prac., 596.)

Further time to serve notice of justification may be obtained.

(1 Tidd's Prac., 272.)

5.—Qualifications of Bail.

In order to be bail, each surety must be—

1. A resident within the State.

2. A freeholder or householder within the State.

3. Worth the amount specified in the order, exclusive of property exempt from execution; but the judge or Trial Justice may allow more

than two bail to justify severally in amounts less than that expressed in the order, if the aggregate justification be equivalent to that of two sufficient bail. (Code, Sec. 217.)

Under the N. Y. Practice, Tillinghast & Shearman's Practice, 597 (Dudley *vs.* Goodrich, 7 Abb., 28,) the court has no power to require new sureties where the present ones have become insolvent since the undertaking was made.

6.—Disqualification of Bail.

The common law disqualifications are applicable to bail under the Code. They are:

1. Judges of any court.
2. Attorneys.
3. Persons indemnified by attorneys.
4. Clerks of court, sheriff, jailers, and any officers of any court.
5. Persons indemnified by sheriff or officers.
6. Persons once rejected as bail.
7. Persons of infamous character, where such infamy would disqualify them as witnesses.
8. Insolvent debtors.
9. Persons liable upon outstanding dishonored bills.
10. A son who allowed his father to receive relief from the county, or a father who suffered his children to live in the poor house.

7.—Justification of Bail.

For the purpose of justification, each of the bail shall attend before the Trial Justice, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the Trial Justice, in his discretion, may think proper. (Code, Sec. 218.)

The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff. (*Ibid.*)

If the Trial Justice find the bail sufficient, he shall—

1. Annex the examination to the undertaking.
2. Endorse his allowance thereon; and
3. Cause them to be filed in the office of the clerk.

And the sheriff or constable shall thereupon be exonerated from liability. (Code, Sec. 219.)

2d.—PROCEEDINGS UPON THE BAIL BOND, AND HEREIN OF

1. Proceedings against bail.
2. Surrender of the defendant.
3. Exoneration of bail.

1.—Proceedings Against Bail.

In case of failure to comply with the undertaking, the bail may be proceeded against by action only.—Code, Sec. 213.

Before commencing the action, the plaintiff should obtain an assignment of the bond from the Sheriff or Constable, which should be endorsed on the bond In such an action, the surety cannot dispute the liability of their principal to arrest.—1 T. & S., N. Y. Prac., 600.

2d.—Surrender of Defendant.

At any time before a failure to comply with the undertaking, the bail may surrender the defendant on their exoneration, or he may surrender himself to the Sheriff of the County, where he was arrested, in the following manner:

1. A certified copy of the bail shall be delivered to the Sheriff or Constable, who shall detain the defendant in the custody thereon, as upon an order of arrest, and shall, by a certificate in writing, acknowledge the surrender.

2. Upon the production of a copy of the undertaking, and Sheriff's or Constable's certificate, the Trial Justice may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated; and on filing the order and the papers used on said application, they shall be exonerated accordingly.—Code, Sec. 211.

But this section shall not apply to an arrest for concealing property from the Sheriff, as per Subd. 3d, of Sec. 202, Code, as to discharge the bail from the undertaking given under such circumstances.—*Ib.*

Surrender of Defendant.—For the purpose of surrendering the defendant, the bail at any time or place, *before they are finally charged*, may themselves arrest him, or, by a written authority, endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.—Sec. 212, Code.

3d.—Exoneration of Bail.

The bail may be exonerated by

1. The death of the defendant, or
2. His imprisonment in a State prison, or
3. His legal discharge from the obligation to render himself amenable to the process, or
4. His surrender to the Sheriff or Constable of the County where he was arrested, on execution thereof.

I. Within twenty days after the commencement of the action against the bail, or

II. Within such further time as may be granted by the Court. Sec. 214, Code.

4TH. DEPOSIT WITH SHERIFF OR CONSTABLE.

The defendant may, at the time of his arrest, instead of giving bail, deposit with the Sheriff or Constable, the amount mentioned in the order, who, thereupon, shall give the defendant a certificate of the deposit, and he then shall be discharged out of custody.—Sec. 220, Code.

The Sheriff or Constable shall, within four days after the deposit, pay the same into Court, and take from the officer receiving the same, two certificates of such payment, the one of which he shall deliver to the plaintiff, and the other to the defendant.—Code, Sec. 221.

For any default in making such payment, the official bond of the Sheriff or Constable, may be proceeded against as in other cases of delinquency.—*Ibid.*

Substituting Bail for Deposit.—If money be deposited as provided above, bail may be given and justified upon notice as prescribed in Sec 216, Code, any time before judgment; and thereupon the Trial Justice before whom the justification is had, shall direct in the order of allowance that the money deposited be refunded by the Sheriff or Constable, to the defendant, and it shall be refunded accordingly —Sec. 222, Code.

Final Disposition of Deposit.—Where money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, it shall be applied, under the direction of the Court, in satisfaction thereof; and, after satisfying the judgment, the surplus, if any, shall be refunded to the defendant.—*Ib.*, Sec. 223.

If the judgment be in favor of the defendant, the entire sum deposited and remaining unapplied, shall be refunded to him —*Ib.*

5TH.—DISCHARGE BY SHERIFF OR CONSTABLE.

The Sheriff or Constable is bound to discharge the defendant, upon receiving a written discharge from the plaintiff, or his attorney. Any bond or security by the defendant, or any one in his behalf, to indemnify the Sheriff for a discharge, is void —Webbers *vs.* Blunt, 19 Wend., 188; Dove *vs.* Maningham, 1 Plowd., 62; 1 Tillinghast & Shear., 606.

6TH.—ESCAPE AND RESCUE.

The Sheriff or Constable is himself liable in all cases of escape or rescue.—Sec. 224, Code; State *vs.* Halford, 6 Rich.

The rescuer is liable to indictment.—Rev Stat. C. 131, Sec. 13, p. 726

7TH.—RECAPTURE.

After negligent escape the Sheriff or Constable may retake the prisoner at any time, even on Sunday.

May also recapture the defendant after a voluntary escape from arrest on *mesne process* (provisional remedy), at any time before the return day of the order of arrest.

8TH.—VACATING ORDER OF ARREST.

A defendant arrested may, at any time before judgment, apply on motion to vacate the order of arrest, or to reduce the amount of bail.—(Code, Sec. 227.)

9TH.—LIABILITY OF SHERIFF OR CONSTABLE.

If after arrest the defendant escapes or is rescued, or bail be not given or justified, or a deposit be not made instead thereof, the Sheriff or Constable shall himself be liable as bail.—Code, Sec. 224.)

He may discharge himself from liability, however,

1. By giving and justifying bail as already described.
2. By imprisoning the defendant.
3. By taking a bond for the prison bounds.

10TH.—FORMS.

FORM NO. 53.—UNDERTAKING OF BAIL.

(*Venire.*)

(Title of cause.)

Whereas, the above named (*defendant*) has been arrested in this action:

Now, therefore, we (*names of sureties*), residing at ———, undertake, pursuant to the Statute, in the sum of (*amount of bail required*) ——— dollars, that the said (*insert name of the defendant*) shall, at all times, render himself accountable to the process of the Court during the pendency of this action, and to such as may be issued to enforce the judgment thereon.

(Date.) (Signatures.)

(*Justification and acknowledgment as in form under arrest in civil actions.*)

FORM NO. 54.—NOTICE OF EXCEPTION TO BAIL OR UNDERTAKING.

(Title of cause.)

Please take notice that the plaintiff does not accept the the bail offered by the defendant (*name of*) in this action.

(Date.) (Signature of plaintiff or his attorney.)

To the Sheriff ———:

FORM NO. 56.—EXAMINATION OF BAIL.

(Title of cause.)

On this ———day of———, 18—, before the undersigned, a Trial Justice in and for the said County, personally appeared (*insert names of sureties*) the bail of the defendant (*name of defendant*) in this action, to justify pursuant to notice; and the said (*name of first surety*) being duly sworn says (*here state testimony as to sufficiency, &c.*)

And the said (*second surety*) being duly sworn, says (*as above*).

(Signature of Bail.)

Taken and sworn to before me, the day and year first above written

A. B., *Trial Justice.*

FORM NO. 57.—ALLOWANCE OF BAIL.

This day appeared before me the within named (*name of surety*) bail for the defendant (*name of defendant*) in this action, and justifies as such, and I find the said bail sufficient, and allow the same.

(Date.) A. B., *Trial Justice.*

FORM NO. 58.—SHERIFF'S ASSIGNMENT OF UNDERTAKING.

Know all men by these presents, that I, M. N., Sheriff of the County of———, do hereby assign the within undertaking (*or if not endorsed refer to undertaking by name of obligors, and date and title of cause,*) to the plaintiff (name of) at his request, to be sued by him according to the Statute.

Witness my hand and seal this——day of——18—

(*Signature and seal.*)

FORM NO. 59.—ACKNOWLEDGMENT OF SURRENDER.

I, M. N., Sheriff (or Constable) of the County of——, hereby acknowledge the surrender of (name of defendant) the principal mentioned in the (within) undertaking (*or if not endorsed on the undertaking, refers to it so as to identify it*) by (name of sureties) his sureties, to us made this——day of——18—

(*Signature of Sheriff or Constable.*)

FORM NO. 60.—NOTICE OF MOTION TO EXONORATE BAIL.

(Venue.)

(Title of cause.)

To (plaintiff or defendant's attorneys.)

Take notice that on the affidavit (a copy of which you are herewith served) I shall move before A. B., Trial Justice of the County and State aforesaid, on the —— day of —— 18 —, at — o'clock M., to exonorate (names of surety) the bail of the defendant in this action, from all further liability upon the undertaking of bail heretofore entered into by them, or for such other relief as may be just.

(*Signature of Defendant or Defendant's Attorney.*)

FORM NO. 61.—ORDER EXONORATING BAIL.

(Venue.)

(Title of Cause.)

On reading and filing the certificate of the Sheriff (or Constable) of the County of ——, showing that the defendant (insert name of) has been surrendered by his bail according to law (or on an affidavit hereto annexed showing that the defendant is dead, &c.,) and also a copy of the undertaking of bail given by (name of sureties) for the appearance

of the said defendant, under an order of arrest granted by me the —— day of ——, 18 —

ORDERED: That the said (names of sureties) be wholly exonorated from all liability on account of the said undertaking.

(Signed.) A. B.,
Trial Justice.

FORM NO. 62.—NOTICE OF ORDER TO VACATE ORDER OF ARREST.

(Tit'e of Cause.)

To (plaintiffs or plaintiff's attorney)

Take notice that on (the annexed affidavits and on) all the pleadings and proceedings in this action, I shall move before A. B., Esq., Trial Justice of the County and State aforesaid, on the —— day of ——, 18 —, at — o'clock —, to vacate the order of arrest granted in the action (and to exonorate the defendant's bail.

(*Signature of defendant of defendant's attorney.*)

FORM NO. 63.—ORDER VACATING ARREST.

(Title of Cause.)

On reading and filing notice of motion, and on the pleadings and proceedings in this action on motion of ——.

ORDERED: That the order of arrest granted by ——, on the — day of ——, 18—, against the defendant (*naming him, if there are several defendants, and an order has not been issued against all*), be vacated, (and that the bail heretofore given for the defendant be exonorated from liability). A. B.,
Trial Justice.

II. BAIL IN CRIMINAL CASES.

1ST.—WHEN TRIAL JUSTICE MAY ADMIT TO BAIL.
2D.—BAIL BY HABEAS CORPUS.
3D —OF THE AMOUNT OF, AND REQUIRING EXCESSIVE BAIL.
4TH.—REFUSING OR GRANTING BAIL ILLEGALLY.

1ST.—WHEN TRIAL JUSTICES MAY ADMIT TO BAIL.

Trial Justices may admit to bail any person charged with any offense the punishment of which is other than death; and if any person under lawful arrest, on a charge regularly made, and not bailable, be brought before a Trial Justice, he shall commit the prisoner to jail; but if the offense charged be bailable, the Trial Justice shall take recognizance, with sufficient security, if the same be offered; in default whereof such party shall be committed to prison, unless it shall clearly appear upon examination that the charge is not founded in probability; in which case the party may be discharged. (Gen. Stat. C, 138, Sec. 5 P. 744.)

2d.—Bail by Habeas Corpus.

Any two Trial Justices are authorized and required to grant the Writ of Habeas Corpus as fully, effectually and lawfully as may any Judge of the Court of Common Pleas and General Sessions, or Judge of the Supreme Court of this State; and if any Trial Justice shall wilfully refuse, neglect, or omit to grant the Writ of Habeas Corpus to any person or persons requesting or demanding the same, who shall be legally entitled to request or demand the same, he shall forfeit for said default the sum of five hundred dollars. (Rev. Stat. C. 25, Sec. 40, P. 202. *Ib.* C. 178, Sec. 14, P. 545. Harvey vs. Huggins, 2 Bail, P. 252.)

(See Habeas Corpus).

3d.—Amount of, and Requiring Excessive Bail.

Recognizances entered into before a Trial Justice shall be according to the following scale:

1st. If the offense charged be punishable with fine and imprisonment, or either, the recognizance of the accused shall not be for less than two hundred dollars; and if the fine be specified or limited by Statute, it shall not be for less than the greatest extent of such fine.

2d. Recognizance of any prosecutor or witness, in case of misdemeanor, shall not be for less than one hundred dollars; and in case of capital felony, for not less than five hundred dollars; though, in all cases, the Trial Justice shall cause the same to be in such larger amount as the circumstances may seem to require. (Rev. Stat. C. 138, Sec. 6, P. 744. The Constitution of the United States directs that "excessive bail shall not be required." Amend. Art. 8.

4th.—Refusing, or Granting Bail Illegally.

Admitting bail when it ought to be denied is punishable by fine, or as a negligent escape at common law; and the refusing bail when the party ought to be bailed is a misdemeanor punishable not only at the suit of the party but by indictment. (Grimke, 49.)

In any, less than an infamous offense, a party may be bailed (even) after conviction pending an appeal. (State vs. Frink, 1 Bay., 168; State vs. Connor, 2 Bay., 34.)

(For forms on bail in criminal cases see Recognizances.)

BARRATRY.

1st.—What is.

2d.—How Punished.

Barratry is the habitual moving, exciting, and maintaining suits and quarrels either at law or otherwise. (1 Inst., 368; 1 Hawk, 243.)

A man cannot be indicted as a common barrator in respect of any

number of false and groundless actions brought in his own right nor for a single act in right of another, for that would not make him a common barrator. (1 Hawk, 243-244.)

An attorney cannot be indicted for barratry merely for maintaining another in a groundless action. (Hawk, P. C. B. 1, C. 21; Co. Litt. 368; 3 Inst. 175.)

2D.—HOW PUNISHED.

The punishment for barratry is fine and imprisonment at the discretion of the Court, and if the party be one of the legal profession, his name will be stricken from the rolls. (State. vs. Chitty, 1 Bail, 379.)

BASTARDS.

1ST.—WHO ARE BASTARDS.
2D.—OF THE MAINTENANCE OF BASTARDS.
3D —MURDER OF A BASTARD CHILD.
4TH.—CAPACITY OF BASTARD AS TO INHERITANCE.
5TH.—FORMS.

1ST.—WHO ARE BASTARDS.

A bastard is one not only begotten, but born out of lawful matrimony, either before marriage, or so long after the death of the husband, that by the usual course of gestation, it could not be begotten by him. (1 Bl. Com., 454.

Also a child born in wedlock is a bastard, if born under circumstances which clearly show that the husband of his mother cannot be his father. (1 Bouv. L. Dic., 6 Binn., 283.)

2D —OF THE MAINTENANCE OF BASTARDS.

Information by Mother.—By Gen. Stat., C. 68, pp. 376-7.—Any woman delivered of a bastard child may voluntarily give information to some Trial Justice of the County in which she resides, or was delivered, as to who is the father; and if she do not voluntarily give such information, and such child is likely to become a burthen to the County, she may be arrested and committed to jail until she declare who is the father of such child, or give security that the said child shall not become chargeable to the said County.

Warrant Against Father.—It is the duty of the Trial Justice to whom such information is given, to issue his warrant against the person so accused, and to compel him to enter into recognizance, with two good and sufficient sureties, in the penal sum of three hundred dollars, conditioned for the annual payment of twenty-five dollars for the mainten-

ance of the child until the age of twelve years, and to save nameless the said County.

To be Committed on Refusal to give Bond—In Case of Denial.—If the accused refuse to enter into recognizance he shall be committed to prison, there to remain until he shall do so. But if he be unable to comply with the above requisitions, or should deny that he is the father of said child, a jury shall be charged in the Court of Sessions to try the question, whether he is or is not the father of the said child, and if convicted shall be required to give the recognizance and security above mentioned; and in default thereof, shall be liable to execution, as in other cases of misdemeanor; such execution to be stayed, except as to costs, on the payment of twenty-five dollars annually.

If Warrant is Resisted.—If the person accused evade or resist the warrant so issued, the Constable shall return the same with a special note, or oath, to the Court of Sessions, whereupon a bill of indictment may be given out, and, if found, a bench warrant may issue.

In Case of Twins.—If the birth be of twins, the recognizance or judgment shall be conditioned for the support of both the bastards, and for the payment of double the amounts required in the case of a single child. 682

Proceedings cannot be had against a woman with child, and the begetter thereof, before the birth of the child, as a child cannot be illegitimate before its birth, there being always a possibility that it may be born in lawful wedlock. (1 Burns, 276.)

3d.—MURDERING A BASTARD.

Concealing Death.—Formerly, a woman concealing the death of a child, which, if born alive, would have been a bastard, was liable to suffer death, as for murder, unless she could prove, by one witness, at the least, that such child was born dead. Now, however, the mere concealment of the birth of a bastard child is no longer to be regarded as a proof of its murder; but the question whether the child was, or was not born alive, is a matter to be determined from the whole of the circumstances of the case; and it seems that there must appear some signs of hurt or some marks of violence upon the body, to warrant a conviction of the mother for murder. (2 Hawk., 438.)

If the death of the child be caused by a potion taken to procure abortion, it is not murder nor manslaughter, unless it appear that it was born alive, and afterwards died of the poison, in which case it is murder, both in the party taking and the party administering it. (1 Hawk., 80.)

If one administer poison to a pregnant woman, for the purpose of procuring abortion, and the woman die thereof, it is murder. (1 H. H., 427.)

If a person shall procure a pregnant woman to destroy her infant when born, and the child is born, and the mother, in pursuance of that

procurement, kills the infant, this is murder in the mother, and the procurer is accessory. (1 H. H., 433.)

4TH.—CAPACITY OF A BASTARD AS TO INHERITANCE.

A bastard can inherit nothing, being looked upon as the son of nobody; but he may take by gift or devise, if he be sufficiently described, and have gained a name by reputation. (1 Bl. Com., 459, n. 19.)

Under Gen. Stat., Ch. LXXXII, Sec. 14, p 425.—Any person who is an inhabitant of the State, or having an estate therein, having a lawful wife, is not at liberty to give, settle, convey, devise or bequeath, in trust or otherwise, to any bastard child or children, or to any woman with whom he lives in adultery, more than one-fourth of his estate, after payment of his debts; and such gift, etc., is declared void for so much of the amount and value thereof as shall or may exceed such fourth part.

5TH FORMS.

FORM NO. 64.—ARREST WARRANT AND AFFIDAVIT FOR REPUTED FATHER ON INFORMATION OF THE MOTHER.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

A. B., Trial Justice in and for the said County and the said State.

To any Lawful Constable:

Whereas complaint upon oath has been made unto me by A. M., single woman, of the said County, that on —— day of ———, 18—, she was delivered of a bastard child, and charged A. F., farmer, of the said County, with having gotten her with child of the said bastard child.

These are, therefore, To command you to apprehend the said defendant, A. F., and bring him before me, to be dealt with according to law.

Given under my hand and seal the —— day of ———. A. D. 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———

Personally appeared before me, A. B., a Trial Justice of the said County and the said State, A. M., a single woman, of the said County, who, being duly sworn, says: That at ———, in the County and State aforesaid, on the —— day of ———, A. D. 18—, she, the said A. M., was delivered of a (male) bastard child, (insert the color of the

eyes and hair,) and that A. F., farmer, of the said County, did get her with child of the said bastard child.

(Signed,) A. M.

Sworn to before me, the —— day of ———, 18—. A. B.,
Trial Justice.

FORM No. 65.—ARREST WARRANT FOR MOTHER OF BASTARD ON INFORMATION.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——

A. B. Trial Justice in and for the said County and the said State.

To any Lawful Constable :

Whereas complaint upon oath has been made unto me that at —— in the County and State aforesaid, on the —— day of —— 18—, A M., single women of said county was delivered of a bastard child, and that it is likely to become chargeable to the county.

These are, therefore, to command you to apprehend the said A. M. and bring her before me to be examined touching the premises.

Given under my hand and seal the day of —— A. D. 18—.

A. B., [L. S]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——

Personally appeared before me A. B., a Trial Justice of the said County and the said State, C. D , who being duly sworn, says : that at ——— in the County and State aforesaid, on the —— day of ——, 18—, A. M., a single woman of the said County, was delivered of a bastard child, and that the same is likely to become chargeable to the County.

C. D.

Sworn to before me this —— day of ——, 18—.

A. B.,
Trial Justice.

FORM No. 66.—RECOGNIZANCE OF THE FATHER.

THE STATE OF SOUTH CAROLINA.
COUNTY OF ———

Recognizance to save harmless the County.

Be it remembered, that on the — day of —, in the year of our Lord one thousand eight hundred and , personally appeared A. F., R. D. and C. E. before me, A. B., Trial Justice in and for the said State, who

acknowledged themselves indebted to the State of South Carolina; that is to say, the said A. F. in the sum of three hundred dollars, and the said R. D. and C. E., each in the sum of three hundred dollars, like money to be levied of their separate lands and tenements, goods and chattels, respectively, to and for the use of the said State, if the above mentioned A. F. shall fail in performing the condition underwritten.

The condition of this recognizance is such that if the said A. F. shall pay the sum of twenty-five dollars annually for the support and maintainance of a bastard child, begotten of A. M., until such child shall be of the age of twelve years, and shall save harmless the county of ——— for the support of said child, then this recognizance to be null and void, or else to remain in full force and virtue.

Taken and acknowledged the day and year above written before me.

A. B.,
Trial Justice.

A. F. [L. S.]
R. D. [L. S.]
C. E. [L. S.]

NOTE—Should the mother give bond rather than declare, let the bond be as above, merely with a condition to save harmless the State.

BAWDS AND BAWDY HOUSES.

Frequenting.—A woman cannot be indicted for being a bawd generally, for that the bare solicitation of chastity is not indictable. (Hawk, 196.) But the frequenting a bawdy house is indictable, and it must be expressly alleged that it is a bawdy house, and not that it is suspected to be so.—Wood, p. 3, c. 3.

Keeping a House of Ill-Fame.—The keeping of a bawdy house is indictable as a common nuisance, as it endangers the public peace by drawing together disolute and debauched persons, and also has a tendency to corrupt the manners of both sexes by such an open profession of lewdness. And it has been adjudged that this is an offense of which a married woman may be guilty, and that she, together with her husband, may be convicted of it. If a person be only a lodger and have but a single room, yet if she make use of it to accommodate a person in the way of a bawdy house, it will be a keeping of a bawdy house as much as if she had a whole house.—1 Russ. on Cr. 299.

Keeper of Bawdy Houses near the University of South Carolina. By the Genl. Stat. 383, any person keeping a bawdy house within ten miles of the University of South Carolina, or being an inmate of such, or who shall gain a maintenance by common prostitution, is liable to be proceeded against as a vagrant, and on conviction shall be required to enter into recognizance in the sum of two thousand dollars, with two

securities (who shall be freeholders) each in the sum of one thousand dollars conditioned not to offend against the provisions of the said Statute for the space of three years or, in default thereof, shall forthwith be committed to the county jail to be dealt with as a vagrant.

Violating Bond.—If any person having given bond shall offend again, such person shall be liable to indictment; and on conviction, to a fine for each day so offending, not exceeding one thousand dollars, and to imprisonment not exceeding twelve months.

In addition to the fine imposed, the party convicted under the said statute is liable to the solicitors costs of three hundred dollars. Also, if deemed practicable and expedient by the Court of General Sessions, the offender may be sentenced to hard labor for a term not exceeding one year.

Duties of Trial Justices Herein.—Any Trial Justice is required, upon the written requisition of the Faculty of said University, or of the solicitor of the Circuit, suggesting the name of the offender, and the witnesses necessary to the investigation, to arrest the party charged; and if the testimony appear sufficient to organize a Court as for the trial of vagrants before which said offender shall be tried and dealt with as before directed; and every Sheriff or Constable, to whom any process for the enforcement of the said statute may be directed, is required to execute the same with all possible dispatch, according to its mandate.

Any Trial Justice failing or neglecting to execute any of the duties above prescribed, shall be liable to pay a penalty of fifty dollars; and any Sheriff or Constable, twenty-five dollars, one moiety to go to the informer and the other to the use of the County.

BEHAVIOR, BOND FOR GOOD, AND FOR THE PEACE.

1st.—For Good Behavior.
2d.—For the Peace.
3d.—Against whom Granted.
4th.—What shall be a Forfeiture.
5th.—How Discharged.
6th.—Forms.

1st.—FOR GOOD BEHAVIOR.

Surety to be of good behavior is a larger requirement than surety to keep the peace (Dalton C. 122; Burn's Justice, 355.) Those who are of ill fame, and those who are accused, or guilty of any of the offenses hereinafter specified may be required to enter into recognizance, before a Trial Justice, either with or without sureties, according to the discretion of the Trial Justice, to be of good behavior; and upon refusal, may be committed.

The offenses for which persons may be bound to good behavior, are—

1. Those who tipple frequently in ale houses or taverns.
2. Convicted drunkards.
3. Those who frequent bawdy houses, or those who keep them
4. The reputed fathers of bastard children; likewise the mother of such child, *if it be chargable to the County.*
5. All persons wandering from place to place without any known residence, or residing in any city, county or town, who have no visible or known means of gaining an honest and reputable livelihood.
6 Suspicious persons going about the country swapping and bartering horses (without producing a certificate of good character from a Trial Justice of the County from which such person or persons last came.)
7. Those who live by gambling or horse-racing, having no other means of gaining a livelihood.
8. All keepers of gaming tables, faro banks or other banks, whatsoever used for gambling.
9. Those who lead idle and disorderly lives.
10. Those who have no visible means of support, and follow no trade, handicraft or profession.
11. All persons repre-enting publicly for gain or reward, without being duly licensed, any play, comedy, tragedy, interlude, or farce, or other entertainment of the stage, or any part thereof.
12. All fortune tellers for fee or reward.
13. All sturdy beggars.
14. Those who contrive, procure or publish libels, whether true or false, either against persons living or dead, by writings, words, pictures or any other signs.
15. Night walkers.
16. Those of bad report or name.
17. Those who keep suspicious company, or are suspected and reported to be pilferers or robbers, and those who harbor horse thieves and felons, and those who are known to be of that description and character. (Rev. Stat. S. C. 382; 1 Nel. 118.)

The author of a writing full of obscene ribaldry, without any reflection on any one, is not punishable by any prosecution; yet he may be bound to his good behavior as a scandalous person of evil fame. (Nel., 118)

Whenever any person is brought before a Trial Justice charged with any misbehavior within the general words of the Statute as a person of bad report, for instance and the Trial Justice commits him for want of sureties, he must express the cause with sufficient certainty, and take care that the cause be a good one

2d.—FOR THE PEACE.

Who may demand.—All persons of sane mind, citizens, aliens, infants, and *feme coverts*, have a right to demand sureties for the peace. But to a person not of sane mind, this surety shall not be granted upon his own request; but if there be cause, the Magistrate ought to provide for his safety. (Dalt C., 117.) Nor should it be granted at the request of a drunken person.

Against whom by the Trial Justice.—Sureties for the peace may be demanded by the Trial Justice:

1st. Of all affrayers, rioters, disturbers, and breakers of the peace.

2d. All who go armed, to the terror of the people, and such as utter menaces or threatening speeches, or otherwise dangerous and disorderly people.

3d. Persons arrested for assault and batteries, and convicted before him.

By the Party.—Sureties for the peace are generally demanded at the instance of the party, and is grantable on his oath, that he has just cause to fear that another will burn his house, or do him a corporal hurt, or that he will procure others to do him such mischief, or that another has threatened to imprison him—for every unlawful imprisonment is an assault.—(1 Hawk., 127.)

If a man has reason to fear that another will hurt his wife or child, he may crave the peace, but not for his servants or cattle.—(Dalt., 16.)

Intent.—When a Trial Justice shall perceive that surety is demanded merely for malice or vexation, without any just cause of fear, he should deny it. If a man require the peace because he is at variance or suit with his neighbor, it shall not be granted.—(Dalt., C. 116.)

Nearest Trial Justice.—If the parties live at a distance from the Trial Justice, he should not grant surety of the peace, unless application has first been made to a Trial Justice in the neighborhood.—(2 Burns, 780.)

3d.—AGAINST WHOM GRANTABLE.

Surety for the peace or good behavior may be craved generally against all persons of sane memory; against impotent persons, for they may procure another to do him an injury; infants and married women, (yet *they* are not bound, only the *sureties*, and a married woman may be required to give such surety on the application of the husband); lunatics, having lucid intervals; but according to Nelson's justice, it is not demandable of one blind, deaf or dumb.

4th.—WHAT SHALL BE A FORFEITURE.

Violence, &c.—A recognizance for keeping the peace may be forfeited by any actual violence, or even an assault or menace to the person of him who demands it, if it be a special recognizance, or if the recog-

nizance be general, by any unlawful action whatever that either is or tends to a breach of the peace, or by any crime against the public peace, or by any private violence to any person.

Not by Trespass.—But a bare trespass upon the lands or goods of another, unless accompanied with a wilful breach of the peace, is no forfeiture of the recognizance.

Nor Words.—Neither are mere reproachful words, as calling a man a knave, or liar, any breach of the peace, so as forfeit one's recognizance, unless they amount to a challenge to fight.—(4 Bl. Com., 256.)

A recognizance for good behavior may be forfeited by all the same means as one for the security of the peace may be, and also by some others, as by going armed with unusual attendance to the terror of the people, or by committing any of those acts of misbehavior which the recognizance was intended to prevent. But not by giving fresh cause of suspicion of that which may never actually happen; for though it is just to compel suspected persons to give security to the public against misbehavior that is apprehended, yet it would be hard upon such suspicion, without proof of any actual crime, to punish them by forfeiture of their recognizance.—(4 Bl. Com., 257.)

5TH.—HOW SUCH RECOGNIZANCE MAY BE DISCHARGED.

By Death.—Such recognizance may be discharged by the death of the principal party bound thereby, if not before forfeited by order of the Court of General Sessions.

By Release.—Or by the release of the party at whose request it was granted.—(4 Bl. Com., 454.)

6TH.—FORM S.

Form No. 67 —Arrest Warrant for the Peace.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——,

A. B., Trial Justice in and for the said county, and the said State; To any Lawful Constable:

Whereas, Complaint upon oath has been made unto me, by C. D., that he has good reason to fear bodily injury to himself, (or some of his family) from E F.

These are therefore to command you to apprehend the said defendant E. F., and bring him before me to be dealt with according to law.

Given under my hand and seal, this——day of —— A. D. 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

Personally appeared before me, A. B., a Trial Justice of the said county, and the said State, C. D., who being duly sworn, says: that he has good reason to fear that E. F., will do, or attempt to do him some bodily injury, (or that he will do, or attempt to do some injury to A. F., the wife of deponent), (or A. D., the child of deponent), or procure the said to be done, and that he does not require the peace of him for any malice, vexation or revenge, but for the causes aforesaid; and he prays surety for the peace.

Sworn to before me this ——day of——18—.

A. B., C. D.,
Trial Justice.

FORM NO. 68.—ARREST WARRANT FOR GOOD BEHAVIOR.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

A. B., Trial Justice in and for the said county and the said State: *To any Lawful Constable:*

Whereas, complaint upon oath has been made unto me by C. D., that E. F., and G. H., of the said county, (here insert the cause or causes for which the party is to be bound for good behavior).

These are therefore, to command you to apprehend the said defendants E. F., and G. H., and bring them before me to be dealt with according to law.

Given under my hand and seal, this——day of —— A. D. 18—.

A. B. [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

Personally appeared before me, A. B., a Trial Justice in and for the said county and the said State, C. D., who being duly sworn, says: that E. F., and G. H., of the said county, (here insert any of the causes already specified within which the party to be bound comes.)

That Y. G., G. Z., &c., are material witnesses thereto.

Sworn to before me, this——day of——18—. C. D.

A. B.
Trial Justice.

NOTE.—Return with the above, (to the Clerk of Court), the testimony of good and creditable witnesses, in support of the charge taken at the examination.

Form No. 69.—Recognizance for the Peace and for Good Behavior.

THE STATE OF SOUTH CAROLINA, }
County of———. }

Be it remembered that on —— day of —— 18—, personally appeared, E. F., G. H., and W. N., before me, A. B., Trial Justice in and for the said State, who acknowledged themselves indebted to the State of South Carolina, that is to say, the said E. F., in the sum of ——dollars and the said G. H., and W. N., each in the sum of —— dollars, like money to be levied of their separate lands and tenements, goods and chattels, respectively, to and for the use of the said State, if the above mentioned E. F., shall fail in performing the condition under written.

The condition of this recognizance is such, that if the said E. F., do keep the peace of the State, and be of good behavior towards all the citizens thereof, (if it be at the request of a private person, add, "and especially towards) (naming the person,) for one year, then this recognizance to be null and void, or else to remain in full force and virtue.

Taken and acknowledged before me the——day and year above written.

E. F. [L. S.]
G. H. [L. S.]
W. N. [L. S.]

A. B.
Trial Justice.

Form No. 70.—Commitment.

THE STATE OF SOUTH CAROLINA, }
County of———. }

By A. B., Trial Justice in and for the said State.

To any Lawful Constable, and the keeper of the County Jail:

Whereas, E. F., of the said county, is now brought before me on a charge requiring him to find sufficient sureties to keep the peace of the State, and be of good behavior towards all the citizens thereof, (and "especially towards C. D.,") for a year; and whereas, he the said, E. F., hath refused, and doth now refuse before me, to find such sureties:

These are to command the said constable forthwith to convey the said E. F., to the common jail of the said county, and deliver him to the keeper thereof with this precept; and you, the said keeper are hereby required to receive the said E. F., into your custody, in the said jail, and him there safely keep until he shall find such sureties as aforesaid.

Given under my hand and seal, this —— day of ——18—.

A. B. [L. S.]
Trial Justice.

FORM NO. 71.—DISCHARGE.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF———. }

By A. B., Trial Justice in and for the said State.

To the keeper of the Jail of the said State, Greeting:

For as much as E. F., in your custody now for the want of his funding sureties to keep the peace of the State, and be of good behavior, hath found before me sufficient sureties in that behalf.

These are therefore to authorize and require you that if the said E. F., do remain in Jail for no other cause, then you forbear to detain him any longer, but suffer him to go at large and that upon the pain that will fall thereon.

Given under my hand and seal, this —— day of ——18—.

A. B. [L. S.]
Trial Justice.

BENEFIT OF CLERGY.

Is an indulgence allowed by the law to persons convicted of certain offenses for the first time, and who, but for such indulgence, must suffer death for such offense

1ST—WHEN ALLOWABLE.

According to the summary of Justice Blackstone:

1ST.—In all felonies, whether new, created, or by common law clergy is allowable, unless taken away by express words of a Statute.

2D.—That where clergy is taken away from the principal, it is not, of course, taken away from the accessory, unless he be also particularly included in the words of the Statute.

3D.—That when the Benefit of Clergy is taken away from the offense, (as in case of murder, buggery, robbery, rape, arson and burglary,) a principal, in the second degree, being present aiding and abetting the crime, is as well excluded from his clergy as he that is principal in the first degree.

4TH.—But when it is only taken away from the person committing the offense (as in case of stabbing, or committing larceny in a dwelling house, or privately from the person,) his aiders and abettors are not excluded through the tenderness of the law, which hath determined that such statutes shall be taken literally. To which may be added:

5TH.—That a party convicted of an offense, from which clergy has not been taken away, can have that plea but once.

2d.—CONSEQUENCES.

After a party has been allowed the Benefit of Clergy and has received the judgment of the law, (as formerly, by branding, but now by imprisonment and whipping) or pardon, he is discharged forever of that and all other clergyable felonies before committed, but not of felonies from which clergy is excluded, and he is restored to all his rights and credits as if he had never been convicted. (4 Bl. Com , 375.)

BIGAMY.

Is the wilful contracting of a second marriage, when the contracting party knows that the first is still subsisting; or it is the state of a man who has two wives, or of a woman who has two husbands living at the same time. When the man has more than two wives, or the woman more than two husbands living at the same time, then the party is said to have committed polygamy, but the name of bigamy is given to this offence in legal proceedings. (1 Russ. on Cr., 187.)

In England this crime is punishable by the Stat. I. Jac. I, c. 11, which makes the offense felony; and the statutory provisions in the U. S. against bigamy are similar to this Statute, except as to the punishment, which is different in many of the States. (2 Kent, 69.)

1st.—What Cases of Second Marriage are Within the Statute.
2d —The Consequences to the Issue of such Second Marriage is.
3d.—The Punishment.

1st.—WHAT CASES OF SECOND MARRIAGE ARE WITHIN THE STATUTE.

By the terms of the Stat., 1 Jac., 2d Section, it is provided, that it shall not extend to any person or persons whose husband or wife shall remain continually beyond the seas, by the space of seven years together, or whose husband or wife shall absent himself or herself the one from the other, for the space of seven years, in any port within her Majesty's dominions, the one not knowing the other to be living within that time; persons divorced and those who were married before the age of consent; and also where the husband or wife be under sentence of imprisonment for life. Such marriages are not within the Statute against bigamy, (4 Bl. Com., 165, note 7.) By the Gen. Stat., Sec. 3, page 735, the provisions of the above Statute obtain in this State, except that divorce is not grantable in this State.

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2D.—OF THE CONSEQUENCES TO THE ISSUE OF SUCH SECOND MARRIAGE.

When either party to a second marriage is guilty thereby of bigamy, the marriage is itself void, and the issue thereof illegitimate; and, even although a second marriage be within the first three exceptions of the Statute, still it will be void in law, though neither party thereto be guilty of felony, (4 Bl. Com., 164.) But in this State it hath been held, that the death of a party will be presumed, after an absence of seven years without the State, without having been heard from; and that the party deserted, is free to marry after that time, and the issue of such marriage legitimate. (Woods *vs.* Woods, 2 Bay, 476.)

3D.—PUNISHMENT.

By the terms of the Statute, "the person and persons so offending shall suffer death as in cases of felony;" so that clergy not being taken away by the express words of the Statute, bigamy is held to be a clergyable offense; and with the law of this State was punished with branding, imprisonment, &c. By the Act of 1836, 6th S. L., branding was wholly abolished. Now, by Act of 1874, No. 518, the punishment is by imprisonment in the penitentiary, for not more than five years, nor less than six months, or by imprisonment in the jail for six months.

BRIBERY.

(See also Embracery and Offices.)

1ST.—DEFINITION.
2D.—EFFECT OF BRIBERY.
3D.—PUNISHMENT.
4TH.—MODE OF PROCEDURE AND FORMS.

Definition.—Bribery is the receiving or offering any undue reward by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to influence his behavior. And it seems that this offense will be committed by any person in an official situation, who shall corruptly use the power or interest of his place for reward or promises; also, in giving or taking rewards for offices of a public nature, or in giving rewards, or making promises to secure votes at an election. (1 Russ. on Cr., 156.)

2D.—EFFECT OF BRIBERY.

In addition to the punishment inflicted upon a person guilty of bribery, he is also subject to be deprived of any undue advantage which he may gain thereby, whether it be the getting a verdict in his favor, in

which case it may be set aside as fraudulent, or whether it be the procuring thereby his election to any office, for it hath been held that bribery rendered an election void, as early as 13th Eliz., when one Thomas Longe (being a simple man and of small capacity to serve in Parliament,) acknowledged that he had given the returning officer and others of the borough for which he was chosen four pounds, to be returned as a member, and was for that premium, elected By this offense the borough was amerced, the member was removed and the officer fined and imprisoned. (1 Bl. Com., 179.)

3d – PUNISHMENT.

At Common Law.—Besides the punishment imposed by Statute, bribery is a crime at common law for which the parties may be indicted and punished by fine and imprisonment.—(4 Doug., 292.)

In superior, judicial or ministerial officers, it is punishable by fine and imprisonment, which may also be inflicted on those who offer a bribe, though it be not taken.—(3 Inst., 147.)

In a judge it was formerly looked upon as so heinous an offense, that it was sometimes punished as high treason; and it is to this day punishable with forfeiture of office, fine and imprisonment.—*Ibid.* 146.

UNDER THE STATUTES OF SOUTH CAROLINA.

Giving or Offering Bribes to Officers.—By the General Statutes, (Cxxxi, pp. 725, 727 and 728,) whoever corruptly gives, offers, or promises to any executive, legislative or judicial officer, after his election or appointment, either before or after he is qualified, or has taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be pending, or may by law come or be brought before him in his official capacity, shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years, or by fine not exceeding three thousand dollars and imprisonment in jail not exceeding one year. 342

Acceptance of Bribes by Officers.—Every executive, legislative or judicial officer who corruptly accepts a gift or gratuity, or a promise to make a gift or do an act beneficial to such an officer, under an agreement, or with an understanding that his vote, opinion or judgment shall be given in any particular manner, or on a particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity, or that, in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment under the laws of this State, and be punished by imprisonment in the State Penitentiary at hard labor not exceeding ten years, or by fine not exceeding five thousand dollars, and by imprisonment in jail not exceeding two years. 343

Corrupting Jurors, Arbitrators, &c.—Whoever corrupts, or attempts to corrupt, any juror, arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias the opinion or influence the decision of such juror, arbitrator, umpire or referee in relation to any cause or matter pending in the Court, or before an inquest, or for the decision of which such arbitration, umpire or referee has been chosen or appointed, shall be imprisoned in the State Penitentiary at hard labor not exceeding five years, or by fine not exceeding one thousand dollars, and imprisonment in jail not exceeding one year. 344

Acceptance of Arbitrators, Jurors, &c.—If any person summoned as a juror, or chosen or appointed as an arbitrator, umpire or referee, corruptly receives any gift or gratuity whatever from any party to a suit, cause or proceeding, for the trial of which such juror has been summoned, or for the hearing or determination of which such arbitrator, umpire or referee has been chosen or appointed, he shall be punished by imprisonment in the State Penitentiary at hard labor not exceeding five years, or by fine not exceeding ten thousand dollars, and imprisonment in jail not exceeding one year. 345

Bribery at Elections.—If at any election hereafter held within the State for Members of the Congress of the United States, Members of the Legislature of this State, Sheriff, Judge of Probate, Clerk, or other County officer, Mayor and Aldermen of any city, Intendant and Wardens of any incorporated town, officers of the militia and volunteer organizations of the State, or at any other election now required or shall hereafter be required by law, to be held within this State, any person shall, by the payment, delivery or promises of money, or other article of value, procure another to vote for or against any particular candidate or measure, the person so promising, and the person so voting, shall each be guilty of a misdemeanor, and upon conviction thereof, shall, for the first offense, be fined in any sum not less than one hundred dollars, and imprisoned for any term of time not less than one month, nor more than six months; and for the second offense, shall be fined in any sum not less than five hundred dollars, nor more than five thousand dollars, and imprisoned for any term of time not less than three months nor more than twelve months. 354

Offering to Secure Voters by Bribery.—If at any election mentioned in the above paragraph, any person shall offer or propose to procure another, by the payment, delivery or promise of money, or other article of value, to vote for or against any particular candidate or measure, or shall offer or propose, for the consideration of money or other article of value, paid, delivered or promised, to vote for or against any particular candidate or measure, such person so offering to procure or vote, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined and imprisoned at the discretion of the Court. 355

Bribery to Procure Office.—If any person shall, directly or indirectly, offer, give, or engage to pay any sum of money or other valuable considertion to another, in order to induce such other person to procure for him, by his interest, influence, or by any other means whatsoever, any office or place of trust within this State, or shall offer, give, promise or bestow any reward, by meat, drink, or otherwise, for the aforesaid purpose, and be thereof convicted, he shall forfeit the sum of not less than one or more than five hundred dollars, and suffer imprisonment for a term not exceeding six months. 346

Accepting Bribes.—If any person shall receive of another any sum of money, or reward of meat, drink or otherwise valuable consideration, for procuring or assisting to procure, any office or place of trust in this State, for any other person whatever, and be thereof convicted, he shall forfeit the sum of not more than one hundred dollars, and suffer imprisonment at the discretion of the Court having cognizance of the same; and, if such offender be in any office, he shall, on the conviction, be disabled from holding the same. 347

Informer free from Penalty.—If either of the parties offending as aforesaid, shall give information, upon oath, against the other offending party, and shall duly prosecute such information, such informer shall be free from the penalties aforesaid. 348

4TH.—MODE OF PROCEDURE.

The proceeding for bribery at Common Law, is by indictment, and the Statutes of the State only add punishment to an offense at Common Law.

5TH.—FORMS.

FORM NO. 72.—ARREST WARRANT FOR BRIBERY.

STATE OF SOUTH CAROLINA, }
COUNTY OF ———. }

By A. B, Trial Justice, in and for the said County and the said State:

To any lawful Constable:

Whereas complaint upon oath has been made unto me by C. D., that at ——, in the County and State aforesaid, on the — day of ———, 18 , one E. F., (Here state the matters charged following the affidavit.)

These are, therefore, to command you to apprehend the said E. F., and bring him before me, to be dealt with according to law

Given under my hand and seal the day of 18 .

A. B., [L S.]
Trial Justice.

AFFIDAVIT.

SOUTH CAROLINA, }
COUNTY OF ———. }

Personally appeared before me, A. B., a Trial Justice of the said County and State, C. D., who being duly sworn, says: That at———, in the said County and State, on the day of 18 , E. T. did (Here set forth all the particulars, if the offense charged be at Common Law, as, for instance, offering a bribe to a Judge or other person in an official station, or for receiving a bribe by one in such station, the affidavit should set forth as follows: The station of the officer, the nature of the case pending before him, the time, place and manner of receiving the bribe, together with the nature of the thing offered. If, however, it fall within any of the foregoing Statutes, then let the matter set forth in the affidavit, be expressed as nearly as possible in the words of the Statute, stating the nature of the case pending, or the office sought to be procured, or the voter influenced, and by what means, as also, the date, time and place of the offering the bribe, and at what election, and its date.)

That X, Y and Z are material witnesses thereto.

Sworn to before me this day of , 18 , C. D.

A. B., *Trial Justice.*

BILLS AND NOTES.

STEALING OF.—(*See Larceny.*)

Time of Commencing Action Upon.—An action upon a bill or note, whether under seal or not, must be commenced within six (6) years. (15 Stat., 497, Sec. 8.)

Parties to Actions Upon.—Persons severally liable upon the same obligation or instrument, including parties to bills of exchange and promissory notes, may all, or any of them, be included in the same action, at the option of the plaintiff. (Code, Sec. 143.)

Bills, notes, etc., taken by Sheriff or Constable upon attachment may be put in suit. (*Ibid*, Sec. 256.)

Given for gambling debts void. (See *Gaming.*)

All bills and promissory notes, payable to order or bearer, for any sum less than one dollar are void; and any person or persons who shall pass, attempt to pass, or receive such bill or note in payment, shall be liable to indictment, and, on conviction, fined not exceeding ten dollars. (Gen. Stat., Ch. LV, Sec. 21, p. 322.)

BONDS.

(*See Recognizance, Undertaking.*)

Trial Justice has jurisdiction in certain actions on. (See *Courts of Trial Justices.*)

BOOKS.

(Of Trial Justices.)

Trial Justices to Keep.—Each Trial Justice shall keep two books, one for civil, and the other for criminal cases, wherein he shall insert all his proceedings in each case by its title, showing the commencement thereof, as well as all fees charged or received by him; and shall produce the same, when required, for the inspection of the Solicitor of the Circuit; and at the expiration of his term of office he shall deposit the same in the Clerk's office for the County for which he was appointed. (Gen. Stat., Ch. 25, p. 202.)

Whenever any Trial Justice shall die, resign, be removed, or go out of office, his books of office, with all records relating thereto, in civil cases, which have not been settled, shall be turned over to his successor, or to some Trial Justice in the same County, and such Trial Justice shall be authorized and required to proceed thereon the same as if he had tried such cases and issued the papers therein himself. (17 Stat., 48. Amendment, Ch. XXV, Part I, Title 1, Gen. Stat, as Sec. 51.)

The book of a Trial Justice, which he is required to keep, is the highest and best evidence of proceedings had before him, either in civil or in criminal cases. (Cherry *vs.* McCants, 7 S. C., p. 224.

BIRDS.

Penalty for Killing Certain Birds.—No person or persons shall at any time or place within the State, take, kill, sell, expose for sale, export beyond the limits of this State, or cause to be taken, killed, sold, exposed for sale, or exported beyond the limits of the State, any mocking-bird, nonpareil, swallow, bee-bird, red-bird, wood-pecker, thrush or wren, under a penalty of five dollars for each bird so taken, killed, sold, exposed for sale or exported beyond the limits of the State; and it shall

be lawful for any person to take or destroy any net, traps or snares used for taking such birds, wheresoever found set for such purpose. (16 Stat., 606.)

Robbing Nest.—No person or persons shall destroy or rob the nests of any of the said birds under a penalty of ten dollars for each offense. (*Ibid.* Sec. 2.)

Penalties Recovery Before Trial Justice.—The penalties incurred for violation of the above provisions shall be recovered before any Trial Justice in the County where such offense shall be committed, and sha l be paid, one-half to the informer, and the other half to the County Commissioners, to and for the use of the poor of the County. (*Ibid*, Sec. 3.)

In Case of Failure of Payment.—In case of failure by any person or persons to pay any sum recovered under the said provisions, the said person or persons shall be committed to the jail of the County for a period not less than five days, and at the rate of one day for every dollar of the sum so recovered and not paid, when the amount recovered exceeds five dollars. (*Ibid*, Sec. 4.)

It shall not be lawful for any person in this State, between the 15th of March and the 1st of October, in any year, to catch, kill or injure, or pursue, with such intent, or to sell or expose for sale, any wild turkey, partridge, dove, woodcock or pheasant, under pain or penalty of ten dollars, or not less than ten days imprisonment. (17 Stat., pp. 286 and 322.)

Nothing herein shall apply to any person who shall kill or take any of the said birds for the purpose of studying its habits or history, or having the same stuffed and set up as a specimen, or to any person who shall kill on his premises any of the said birds in the act of destroying fruit or grain crops. (*Ibid*, Sec. 4)

BUGGERY.

Definition.—Is the detestable crime of having commerce contrary to the order of nature, by mankind with mankind, or with brute beasts, or by womankind with brute beasts. (3 Inst., 58.)

Punishment.—This is felony, and was formerly punished with death. Now, by Rev. Stat S. C., p. 736, the punishment is imprisonment in the State Penitentiary for five years, and a fine of five hundred dollars, or both, at the discretion of the Court.

BURGLARY.

Is the breaking and entering the house of another, in the night time, with intent to commit a felony, whether the felony be actually committed or not. (2 Russ. on Cr., 2; 4 Bl. Com., 224)

1st.—What Constitutes the Offense.
2d —The Punishment.
3d.—Reward for Convicting a Burglar.
4th.—Forms.

1st.—WHAT CONSTITUTES THE OFFENSE,

The circumstances to be considered are:

1. In what place the offense can be committed.
2. The time.
3 By what means.
4. The intent.

Burglary at Common Law.—1. In what place a burglary can be committed:

It must be committed in a mansion house, actually occupied as a dwelling; but if it be left by the owner *animo nevertendi*, though no person resides in it in his absence, it is still his mansion. A portion of a building may come under this description, as a set of chambers in a college or inn, or a loft over a coach-house and stables. It cannot, however, be committed by the breaking into an enclosed ground, or booth, or tent, though the owner may lodge therein, for the law regards thus highly nothing but permanent edifices. (2 Russ on Cr., 12; 1 Hale, 558; Hawk, Ch. 38, Sec. 18; State *vs.* Genns, 1 Nott & McCord, 583.)

Burglary by Statute.—By the Gen. Stat. S. C., Ch. XXIX, Sec. 32, p. 720: Any house, out-house, apartment, building, erection, shed or box, in which there sleeps a proprietor, tenant, watchman, clerk, laborer, or person who lodges there, with a view to the protection of property, shall he deemed a dwelling house, in which or any parcel of which burglary may be committed; and of such a dwelling house, or any other dwelling house, all houses, out-houses, buildings, sheds and erections, which are within two hundred yards of it, and are appurtenant to it, or to the same establishment of which it is an appurtenance, shall be deemed parcels.

2. The time.

The offense must be committed in the night, for in the day there can be no burglary.

For this purpose it is deemed night when, by the light of the sun, a person cannot clearly descern the face or countenance of another.

This rule, it is evident, does not apply to Moonlight. (4 Bl. Com., 224; 2 Russ on Cr., 32.)

The breaking and entry need not be done on the same night. (1 Russ & Ky., 417.)

3. The means used.

There must be both a *breaking* and an *entry*.

First. Of the breaking, which may be actual or constructive.

An actual breaking is where the burglar breaks or removes any part of the house or fastenings provided for it, with violence. Breaking a window taking a pane of glass out, by breaking or bending the nails, or other fastenings, raising a latch where the door is not otherwise fastened; picking open a lock with a false key; putting back the lock of a door or the fastening of a window with an instrument; turning the key when the door is locked on the inside, or unloosening any other fastening which the owner has provided are several instances of actual breaking.

Also the getting down or into the chimney of a house, is a sufficient breaking, though the party does not enter any of the rooms of the house. (2 Russ. on Cr , 2; 2 Chit. Cr. Law, 1093.)

The breaking of an inner door of a house will be sufficient to constitute a burglary. (1 Hale, 553.)

Constructive breakings occur when the burglar gains an entry by fraud, conspiracy or threats, as by pretence of business, legal process, eluding servant, etc

And the least *entry*, with the whole or any part of the body, head, or foot, or any instrument or weapon, introduced for the purpose of committing a felony, will be sufficient to constitute the offense. (4 Bl. Com., 227.)

4TH.—OF THE INTENT.

The breaking and entering must be with a felonious intent, or it will not be burglary; but it is not necessary that such intent be executed. If the intention of the entry be a mere trespass, as to beat a person in the house, such entry will not be burglary. But if a felony be actually committed, it will generally be held evidence of an intention to commit it; and it makes no difference whether the felony committed be a felony at common law or by Statute (2 Russ, on Cr. 33)

2ND.—THE PUNISHMENT.

At Common Law.—By 18th Eliz., C. 7 and 3 W. C 9, benefit of clergy is taken away, in the cases of burglary, both from the principal and accessory before; but in all cases of burglary, accessaries after must have their clergy, (2 H. H. 364; 1 Hawk, 357, 358.)

By A. A., 1878, No. 541, any person who shall commit the crime o

burglary at common law, shall, upon conviction, be imprisoned in the State Penitentiary at hard labor during the whole lifetime of the prisoner.

By Statute.—Burglary under the Statute, is punishable by hard labor in the Penitentiary for a period not exceeding thirty years, nor less than one year. (Gen. Stat., Sec. 7, P. 715).

3d.—REWARD FOR CONVICTING A BURGLAR.

Any person who shall apprehend and take any person guilty of burglary, or the felonious breaking of any house, and prosecute him so apprehended and taken, until he be convicted of such burglary or felony, shall have and receive the sum of ten dollars, within six months after such conviction, to be paid by the the State Treasurer, out of any money in the Treasury, such person rendering a certificate to the said Treasurer, under the hand of the Judge before whom such felon shall be convicted for such burglary or felony, certifying the conviction of such felon for the said offense or offenses, and also that such felon was taken by the person, claiming the said reward.

In case any dispute shall arise between the person apprehending the said felon, touching the right and title to the said reward, the judge certifiying as aforesaid, shall, in and by his said certificate, direct and appoint the said reward, to be paid to and amongst the parties claiming the same in such share and proportion as to him shall seem just and reasonable. Gen. Stat., 721.

In case any constable, watchman, or other person having a wife or child living, shall happen to be killed, maimed or disabled from labor by any such burglar or housebreaker, in endeavoring to apprehend, or in making pursuit after him, such person, in case he shall be maimed or disabled, shall be entitled to, and shall yearly, and every year, receive out of the Treasury of this State, during the lifetime or abode of such person in this State, the sum of thirty dollars; but if such person so maimed and disabled shall be a married man, then he shall be entitled to, and receive out of the public Treasury, during his lifetime and abode in this State, the sum of forty-five dollars, yearly; and, in case such person shall happen to be killed, then the widow of such person shall thenceforth during her widowhood and residence in this State, or the children of such person, (when there is no widow) under the age of twelve years, shall be entitled to receive out of the public Treasury of this State, the said sum of forty-five dollars, upon a certificate under the hands and seals of two of the Trial Justices of the county of such person being so killed, maimed, or disabled from labor, which certificate the said Trial Justices, upon sufficient proof before them made, are immediately required to give, without fee or reward. (*Ibid.*)

FORMS.

FORM NO. 73.—ARREST WARRANT FOR BURGLARY.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF———. }

By A. B, Trial Justice in and for the said county and the said State.

To any Lawful Constable:

Whereas complaint upon oath has been made unto me by C D, that at—— in the county and State aforesaid, on the —— day of —— 18—, in the night time, the dwelling house of him the said C. D., in the county aforesaid, was feloniously and burglariously broken open and (state the property) of the value of —— dollars, of the goods and chattels of him the said C. D., feloniously and burglariously was stolen, taken, and carried away from thence; and that he has just cause to suspect that E F., of the said county, the said felony and burglary did commit.

These are, therefore, to command you to apprehend the said defendant, E F., and bring him before me to be dealt with according to law.

Given under my hand and seal, the——day of—— A. D. 18—.

A. B. [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF———. }

Personally appeared before me, A. B., a Trial Justice of the said county and State, C. D., who being duly sworn says: &c. (Here take care to, 1st. State all the circumstances of the breaking and entry whether they seem pertinent or not. 2d Set forth the full names of the owner, and occupant of the house, and whether the occupant held as tenent, or as the agent, or servant of the owners. 3d. If the offense be burglary under the Statute, state the distance in yards, between the house broken and the dwelling house. 4th. State whose and what goods were stolen, (as a party may be acquitted of the burglary and convicted of the larceny.)

Conclude as in the usual form.

BURNING.

(*See Arson and Malicious Mischief.*)

Under this head are included certain statutory offenses not included under the head of Arson, which are:

1st.—FELONIES, OR
2D.—MISDEMEANORS.

1st.—FELONIES.

Burning Stacks of Corn, Etc, in the Night-Time.—Whoever shall in the night-time maliciously, unlawfully and willingly burn, or cause to be burned or destroyed any ricks or stacks of corn, hay or grain, or

kilns, shall, for every such offense, be punished by hard labor in the Penitentiary for life, or for a period of not less than ten years, according to the aggravation of the offense.—(Gen. Stat., Sec 2, p. 714.)

Burning and Cutting Frames of Timber Prepared for Building. Whoever shall maliciously, unlawfully, willingly and secretly burn, or cause to be burned, cut, or cause to be cut or destroyed, any frame or frames of timber of any other person or persons, made and prepared or hereafter to be made or prepared for or toward the making of any house or houses, so that the same shall not be able for the purpose for which it was prepared, shall be deemed and adjudged a felon, and shall be punished by imprisonment in the Penitentiary for a period not to exceed ten years, nor less than two years.—(*Ibid*, Sec. 4.)

Burning Turpentine Farm.—Whoever shall set fire to any woods so near any turpentine farm in the State as to injure or burn any such farm, and whoever shall wilfully and maliciously set fire to any woods at any time whereby such farm or farms are injured and burned, the person or persons so offending shall be adjudged guilty of a felony and liable to be punished at hard labor in the Penitentiary for a period of one year, or a fine in the sum of five hundred dollars.—(16 Stat., 61.)

Ships.—If any master, mariner, or other officer belonging to a ship, shall wilfully cast away, burn, or otherwise destroy the ship unto which he belongeth, or procure the same to be done, to the prejudice of the owner, or owners thereof, or any merchant that shall loan goods thereon, he shall suffer death as a felon.—(1 Ann S. 2, c. 9, P. L. 93.)

2d.—MISDEMEANORS.

Burning Stacks of Corn, Etc., in Day Time.—Whoever shall maliciously, unlawfully and wilfully burn or cause to be burned or destroyed, any ricks or stacks of corn, or grain, or kilns, in the day time, such person shall be adjudged guilty of a misdemeanor and liable to be fined and imprisoned in the discretion of the Court for said offense.—(Gen. Stat. Sec. 3, p. 714.)

Burning Carts, Wood, Etc.—Whoever shall maliciously, willingly, and unlawfully burn, or cause to be burned, any wain or waines, cart or carts, laden or to be laden with coals or any other merchandises, of any other person or persons, or maliciously, willingly and unlawfully do burn, or cause to be burned, any heap or heaps of wood of any other person or persons, prepared, cut and felled, or to be prepared, cut or felled for making coals, billets or talwood, shall not only lose and forfeit to the party grieved treble damages for such offense or offenses, the same to be recovered by action, and also shall be punished by fine and imprisonment in the discretion of the Court.—(*Ibid*, Sec. 5, p. 715.)

Whoever shall wilfully and maliciously set fire to or burn any grass, brush or other combustible matter, so as thereby any woods, fields,

fences or marshes of any other person or persons be set on fire, or cause the same to be done, or be thereunto aiding or assisting, shall, upon indictment and conviction thereof, be liable to fine and imprisonment, at the discretion of the Court, and shall, moreover, be liable to the action of any person or persons who may have sustained damage thereby: *Provided*, That no person or persons shall be prevented from firing woods, fields or marshes within his, her, or their own bounds, so that he, she or they suffer not the fire to get without the bounds of his, her or their lands, and injure the woods, fence or grass of his neighbor or neighbors. (*Ibid*, Sec. 6.)

CARDS.

(*See Gaming.*)

CARRYING CHALLENGE.

(*See Challenge to Fight.*)

CARTS.

(*See Burning.*)

CARRIERS.

Definition.—All persons carrying goods for hire, as masters and owners of ships, lightermen, stage-coachmen, and the like, come under the denomination of common carriers, and are chargeable, on the general custom of the dealer for their faults or miscarriages. (1 Bac. Abr., 543.)

1st.—Statutory Provisions in Regard to.
2d.—Duties and Responsibilities.
3d.—Criminal Liability.
4th.—Larceny of Goods Delivered to Carrier.

1st.—STATUTORY PROVISIONS IN REGARD TO.

To Publish Names of Parties Interested.—By Rev. Stat. Title XII, CLX, P. 329. When any association of individuals, not having a charter from the State, shall undertake to carry, for hire, by railroad, in whole or in part, the said individuals are required to publish, in three newspapers of the State, a correct list, to be sworn to before the Clerk of Court of the names and residences of parties interested in carrying.

To be Published—Penalty for Failure.—The said list shall appear at least once in two months during the time they are engaged in said business; and all persons thus engaged in the business of common carriers

failing to make such publication shall be deemed guilty of misdemeanor, and liable to indictment.

Common law Liability not Limited by Public Notice.—No public notice or declaration shall limit or in anywise affect the liability of common carriers for or in respect of any goods to be carried and conveyed by them, but they shall be liable, as at common law, to answer for the loss of or injury to any articles and goods delivered to them for transportation, any public notice or declaration by them made and given contrary thereto or in anywise limiting such liability notwithstanding.

2D.—DUTIES AND RESPONSIBILITIES.

Bound to Carry.—A carrier shall not evade the law by refusing to carry goods at the prices limited; for if a common carrier, who is offered his hire, refuse to carry goods, he is liable to an action, in the same manner as an inn-keeper who refuses to entertain a guest, or a smith who refuses to shoe a horse. (1 Bac. Abr, 344,)

So an action will be against a common ferryman who refuseth to carry passengers. (*Ib.*)

Liable for Damage.—When goods are to be delivered to a carrier, and he is robbed of them, he shall be charged, and answer for them by reason of the hire; and this was at the common law before the hundred was answerable over to him, because such robbery might be by consent and combination carried on in such a manner that no proof could be had of it. (1 Salk., 143)

Liable Though Robbed.—And although it may be thought a hard case, that a poor carrier, who is robbed on the road, without any manner of default in him, should be answerable for all the goods he takes, yet the inconvenience would be far more intolerable, if it were not so, for it would be in his power to combine with robbers, or to pretend robbery, or some other accident, without a possibility of remedy to the party; and the law will not expose him to so great a temptation, but he must be honest at his peril. (12 Mod., 482.)

For Damage.—And, generally, if a man delivers goods to a common carrier, to carry to a certain place, if he loses or damages them, then an action upon the case lies against him, for by the custom of the realm he ought to carry them safely. (1 Bac. Abr., 343)

And if he be a common carrier, though there be no agreement or rate settled, or forms of payment, yet he shall recover his hire on a *quantum meruit*, and therefore shall be liable for loss and damages. (*Ib.*)

Also, if a person, who is no common carrier, takes upon himself to carry any goods, though I promise him no reward, yet if my goods are lost or damaged by his default, I shall have an action against him. (*Ib.*) For the very taking of the goods is a general consideration, though he be not a common carrier; and the acceptance of the goods makes him liable. (Shaw. 104.)

Delivery.—A delivery to the carrier's servant is a delivery to the carrier; and if goods are delivered to a carrier's porter and lost an action will be against the carrier. (Read, Car.)

Liability for Money.—If a box is delivered generally to a carrier, and he accepts it, he is answerable, though the party did not tell him there is money in it; but if the carrier asks, and the other says no, or if he accepts it conditionally, provided there is no money in it, in either of these cases the carrier is not liable. (Str., 145.)

If a man delivers a box to a carrier, and he asks what is in it, and a man tells him a book and tobacco, (as the case was) and, in truth, there is one hundred pounds besides, yet, if the carrier is robbed, he shall answer for the money; for the other was not bound to tell him all the particulars in the box, and it was the business of the carrier to have made a special acceptance. (1 Bac. Abr., 345.)

May Detain until hire Paid.—E. I. A. Skinner and Upshaw. The plaintiff brought an action of trover against the defendant, who was a common carrier, for goods delivered to him to carry. On not guilty pleaded the defendant gave in evidence, that he offered to give the goods to the plaintiff if he would pay him his hire; but that the plaintiff refused, and therefore he retained them. And it was ruled by Holt, Chief Justice, at Guildhall, (before whom the cause was tried) that a carrier may retain the goods for his hire, (L. Raym., 752.)

And even if the goods be stolen goods yet the right owner shall not have them without paying for the carriage; for the carrier being obliged to receive and carry the goods, the law will not deprive him of the remedy for the reward of carrying them. (*Ib.* 166.)

3d.—CRIMINAL LIABILITY.

Under General Statute C CXXXVI. P. 739, Of offenses against Civil Rights, common carriers are held criminally liable for discriminating between persons on account of race, color, or previous condition, and for assigning special quarters or accommodations to any passenger or other person whom they shall have undertaken to carry because of race, color or previous condition. The punishment is by fine and imprisonment in the Penitentiary.

4th.—LARCENY OF GOODS DELIVERED TO A CARRIER.

It hath been holden, that a carrier embezzling goods, which he has received to carry to a certain place, is not guilty of felony, because there was not a felonious taking; but it is liable only to a civil action. (1. Hawk., 89, 90.)

A Breach of Trust Punished as Larceny.—Any person committing a breach of trust with a fraudulent intention shall be held guilty of larceny; and so shall any person who shall hire or counsel any other person to commit a breach of trust with a fraudulent intent. (Rev. Stat. S. C. P. 716.)

If a carrier after he has brought the goods to the place appointed, take them away again, secretly, with intent to steal them, he is guilty of felony; because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger. (1. Hawk., 90.)

Also, it hath been resolved, if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and disposes of them to his own use, that is felony; because this declareth, that his intention originally was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them. (Kelyuge, 82.)

Stolen by Another.—When goods are stolen from the carrier, he may prefer an indictment against the felon, as for his own goods; for though he has not the absolute property, yet he has such a possessory property, that he may maintain an action of trespass against any one who takes them from him, and so may indict a thief for taking them, and the indictment were good also if it had been brought by the real owner (Kelyuge, 39.)

Stolen by Owner.—And there is a special case, wherein it is said, that a man may commit larceny by stealing his own goods, delivered to the carriers, with intent to make him answer for them; for the carrier had a special kind of property in the goods, in respect whereof, if a stranger had stolen them, he might have been indicted generally, as having stolen the said carrier's goods; and the injury is altogether as great, and the fraud as base, when they were taken away by the very owner. (1. Hawk., 94.)

CATTLE.

1st —Larceny of.
2d —Malicious Shooting or Wounding of.
3d.—Marking, Branding or Disfiguring.
4th.—Breaking into Fields.
5th.—Killing for Packing without being Penned for 12 hours.
6th.—Butchers in Charleston to File with Clerk of Market, Number of Marks, &c.

1st.—LARCENY OF.

Any person found guilty of the larceny of any horse, mule, cow, hog or any other live stock shall suffer imprisonment in the State Penitentiary at hard labor for a period of not less than one year nor more than ten years, and such fine as the Court in its discretion, may see fit to impose. (A. A. 1878. Sec. 3. No. 541.)

2d.—MALICIOUS SHOOTING OR WOUNDING OF.

Whoever shall wilfully, unlawfully and maliciously cut, shoot, maim, wound or destroy any horse, mule, neat cattle, hog, sheep, goat or other personal property, the goods and chattels of another, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined and imprisoned at the discretion of the Judge, before whom the case shall be tried.—(Gen. Stat. p. 717.)

3d.—MARKING, BRANDING OR DISFIGURING.

Whoever shall be lawfully convicted of wilfully and knowingly marking, branding or disfiguring any horse, mare, gelding, colt, filly, ass, mule, bull, cow, steer, ox or calf, of or belonging to any other person, shall, for each and every horse, mare, etc., of which he shall or may be convicted of branding or disfiguring, as aforesaid, be subject to the penalty of one hundred dollars; and in case the said offender shall afterwards repeat or commit a like offense, on conviction thereof he shall be liable to the penalty or fine of two hundred dollars for each and every horse, mare, etc., by him killed, branded or disfigured, and of which he shall be convicted as aforesaid.—(Gen. Stat. Sec. 22. p. 718.)

Whoever shall be lawfully convicted of willingly and knowingly marking, branding or disfiguring any sheep, goat or hog, of, or belonging to any other person, shall, for each and every sheep, goat or hog, of which he shall or may be convicted of branding or disfiguring, as aforesaid, be subject to the penalty of twenty-five dollars, and in case the said offenders shall afterwards repeat or commit a like offense, on conviction thereof he shall be liable to the penalty or fine of fifty dollars, for each and every sheep, goat or hog by him killed, branded or disfigured, and of which he shall be convicted as aforesaid.—(*Ibid*, Sec. 23.)

4th.—BREAKING INTO FIELDS.

If a man find the beasts of a stranger wandering on his grounds doing him hurt or damage, he may detain him until satisfaction be made him of the injury he has thereby sustained. (3 Bl. Com. Sec. 7.)

And by Genl. Stat. Part. I., Title XI. C. L. P. 296. If any horses, mules, cattle, hogs, sheep or goats, shall break into, or be found in any field, in which shall be growing, or ungathered, any grain, cotton or vegetable production, raised for market or domestic consumption, the said field being inclosed with a lawful fence according to the provisions of the Statute, (see Fences—), it shall be lawful for the owner of such field to seize such horses, mules &c., and keep them in confinement until he shall have notified, within six hours after such seizure, the owner, or his or her agent, who shall be bound to pay the owner of such field all damages which he or she may have sustained thereby; but if it should appear that the fence inclosing such a field is not a lawful fence, then the verdict shall be for the defendent.

If any person whose fields are not inclosed by a lawful fence shall kill, wound, maim, chase, wrong, or in any manner injure, any horses, mules, cattle, hogs, sheep or goats, which shall be found in such field, whether cultivated or not, or shall cause or procure the same to be done by any other person, such person, so offending, shall be liable to an action, and the plaintiff shall recover full satisfaction for the injury with costs, if the verdict exceed four dollars.

5th.—KILLING FOR PACKING, WITHOUT BEING PREVIOUSLY PENNED FOR TWELVE HOURS.

In case any person shall kill any cattle, to put in barrels for sale, without having first penned them for twelve hours before killing them, every such person shall forfeit the sum of ten dollars, current money, for every head of cattle so killed, to the person who will sue for the same to be recovered before any Trial Justice. (Gen. Stat. P. 303.)

6th.—BUTCHERS IN CHARLESTON TO FILE WITH CLERK OF MARKET NUMBER OF MARKS, &c.

By Gen. Stat., 329, all butchers and others purchasing cattle for sale in the city of Charleston, are required within forty eight hours after each purchase of neat cattle shall have been made, to file with the Clerk of the market, in said city, the number of cattle purchased, the marks and brands appearing upon the same, and the names of the persons from whom said cattle have been purchased

Penalty for neglect.—In every case of neglect or refusal, to comply with the above requisition, the party offending shall be liable to a penalty of twenty five dollars, to be recovered by indictment.

Clerks for.—For recovery and filing each return, the said clerk shall receive, as compensation, from the person making such return, a fee of five cents.

CHALLENGE TO FIGHT.

(*See Duelling.*)

CHALLENGE JURORS.

(*See Courts of Trial Justices.*)

CHAMPERTY.

Champerty is a bargain with a plaintiff or defendent, *campum partire*, to divide the land sued for between them, if they prevail at law, the champertor undertaking to carry on the suit at his own expense.

This offense differs from maintenance in this, that in the latter the person assisting the suitor receives no benefit, while in the former he receives some portion or other of the land or other property thereof sued for. (1 Hawk., 267; 4 Bl. Com. 135.)

2D.—ITS PUNISHMENT.

The punishment of Champerty is by fine and imprisonment; and, in case of buying pretended title to lands, a forfeiture of the full value of the land.

CHEATS.

A cheat is a deceitful practice, of a public nature, in defrauding another of a known right, by some artful device, contrary to the plain rules of common honesty, (1 Hawk, 343), cheats are either,

1ST.—AT COMMON LAW, OR
2ND.—BY STATUTE.

1ST.—AT COMMON LAW.

What Constitutes a Cheat at Common Law.—To constitute a cheat, at common law, the offense must be: 1st., of a public nature; for every species of fraud and dishonesty in transactions between individuals is not the subject matter of a criminal charge at Common Law; it must be such as is calculated to defraud numbers, and to deceive the people in general.

2d., The cheating must be done by false weights, false measures, false tokens, or the like, calculated to deceive numbers.

3d., The object in defrauding must be successful, otherwise, it is a mere attempt. (2d East, P. C., 816; 6 Mass., R. 72; 2 Burr, 1,125; 2 Mass., 139.)

As illustrations:

On an indictment against the defendant, a miller, for changing corn delivered him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it was only a private cheat, and not of a public nature. It was answered, that being a cheat in the way of trade, it concerned the public, and, therefore, was indictable. And the Court was unanimously agreed not to quash it. (T. 16, G. 2., K & Wood. Sess. C. V., 1.) A person falsely pretending that he had power to discharge soldiers, took money of a soldier to discharge him; and being indicted for the same, the Court held the indictment to be good. (T. 3, C., Serlstead's case, I Latch., 202.) As there are frauds which may be relieved civilly, and not punished criminally (with the complaints

whereof the Courts of Equity do generally abound,) so there are other frauds, which in a special case, may not be helped civilly, and yet shall be punished criminally; thus, if a minor goes about the town, and pretending to be of age, defrauds many persons by taking credit for considerable quantities of goods, and then insists on his non-age; the persons injured cannot recover the value of their goods, but they may indict and punish him for a common cheat. (Barl, 100.)

Finally, the distinction, which, as it seemeth, will solve almost all cases of this kind, was taken in the case of K. and Wheatley, H. 1, G. 3. The defendant was indicted and convicted for selling beer short of the due and just measure, to wit, sixteen gallons as for eighteen It was moved in arrest of judgment, and by the Court, this is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness in not measuring the liquor upon receiving it, to see whether it held out the just measure or not. Offenses that are indictable, must be such as affect the public; as if a man uses false weights and measures, and sells by them to all, or to many of his customers, or uses them in the general course of his dealing. So, if there is a conspiracy to cheat: for these are deceptions that common care and prudence are not sufficient to guard against. These are much more than private injuries; they are public offenses. But in the present case, it is a mere private imposition or deception; no false weights or measures are used; no conspiracy; only an imposition on the person he was dealing with, in delivering him a less quantity instead of a greater, which the other carelessly accepted. It is only a non-performance of his contract; for which non-performance he may bring his action. So the selling an unsound horse for a sound one, is not indictable; the buyer should be more on his guard And the distinction which was laid down as proper to be attended to in all cases of this kind, is this: that in such impositions or deceits, where common prudence may guard persons against their suffering from them, the offense is not indictable, but the party is left to his civil remedy, for the redress of the injury that has been done to him; but where false weights and measures are used, or false tokens produced, or such methods taken to cheat and deceive, as people cannot, by any ordinary care or prudence, be guarded against, then it is an offense indictable. (Burr. R ts., 1,125.)

II.—BY STATUTE.

Whoever shall, falsely and deceitfully, obtain or get into his or their hands or possession, any money, goods, chattels, jewels or other things, of any person or persons, by color or means of any false token or counterfeit letter made in any other man's name, every person or persons so offending, and being thereof lawfully convicted, shall suffer such imprisonment as the Court may adjudge. (Gen. Stat., 717.)

Whoever shall, by any false pretense or representation, obtain

the signature of any person or persons to any written instrument, or shall obtain from any other person or persons any chattel, money, valuable security or other property real or personal, with intent to cheat and defraud any person or persons of the same, every such offender shall be guilty of a misdemeanor, and , on conviction, be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment not exceeding three years.

If, upon the trial, it appears that such person obtained the property in such a manner as to amount in law to larceny, such person shall not, by reason thereof, be entitled to be acquitted of such misdemeanor; but shall not be afterwards prosecuted for larceny upon the same grounds. (16 Stat., 39.)

A distinction is to be observed between a false pretense and a false affirmation.

In H. 13, G. 2, and Munoz, it was adjudged that an indictment, averring the offense to be by false tokens, without showing what those false tokens are, is not sufficient; and that the fraudulently procuring a note from a person, by falsely affirming that there was one in the next room that would pay the money due upon it, whereas in fact there was no such person in the next room, is not a false token, but a false affirmation only. (Sess., Ch. V, 201; Str., 1129.)

It hath, however, been held that obtaining property from an ignorant person by threats of a prosecution for stealing, or by threats of his life, constitutes the offense of swindling. (State *vs.* Vanghan & Holcolm, 1 Bay., 282.)

But the selling a blind horse as sound, or a free girl as a slave, are not within the Statute. (State *vs.* Delyon, 1 Bay., 353; and State *vs.* Wilson, 2 M. C. R., 135.)

FORM NO. 74.—WARRANT TO APPREHEND A CHEAT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

By A. B., Trial Justice in and for the said County and the said State:

To any Lawful Constable:

Whereas complaint upon oath has been made unto me by C. D., that at ———, in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E. F., by a false privy token, (or counterfeit letter or order, or writing,) that is to say, by (here particularize the offense,) did falsely and deceitfully obtain, and get into his hands and possession, (here mention the things,) of the value of ——— dollars, the proper goods and chattels of him, the said C. D., contrary to the Statute in that case made.

These are, therefore, To command you to apprehend the said defendant, E F., and bring him before me, to be dealt with according to law.

Given under my hand and seal, the —— day of ———, 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———

Personally appeared before me, A. B., a trial Justice of the said County of the said State, C. D., who, being duly sworn, says: That at ———, in the said County and State, on the —— day of ———, 18—, one E. F., by a false privy token, (here state what the false token was and all the means used,) that is to say, by (here set forth at large the particulars of the charge,) did falsely and deceitfully obtain (here mention articles so obtained) of the value of ——— dollars, of the proper goods and chattels of him, the said C. D., contrary to the Statute in that case made.

That X., Y. and Z. are material witnesses thereto.

C. D.

Sworn to before me, this —— day of ———, 18—.

A. B.,
Trial Justice.

CHURCH.

(SEE ARSON)

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

1ST.—THE NATURE OF THIS ACTION AND WHAT PROPERTY MAY BE THUS CLAIMED.
2D.—THE AFFIDAVIT.
3D.—THE UNDERTAKING OF PLAINTIFF.
4TH.—THE ENDORSEMENT ON AFFIDAVIT AND SUMMONS TO DEFENDANT.
5TH.—JUSTIFICATION OF PLAINTIFFS SURETIES.
6TH.—DUTIES OF CONSTABLE
7TH.—RE-DELIVERY TO DEFENDANT AND HIS SECURITY.
8TH.—CLAIM OF PROPERTY BY A THIRD PERSON
9TH.—TRIAL OF CASE AND JUDGMENT.
10TH.—FORMS.

1ST.—NATURE OF THIS ACTION AND WHAT PROPERTY MAY BE THUS CLAIMED.

This remedy is allowed only in actions for the recovery of the *possession* of personal property. While the plaintiff may recover either the possession or the value of the property sued for, he cannot have nor ask

for both; when, therefore, the complaint demands judgment for the *value* of the property, the remedy provided in this Statute cannot be allowed. (Tillinghast & Shearman's N. Y. Practice, 632.)

Under the same authority, this action must be brought (1st) against the party who has, at the time of initiating the proceedings, the possession, in fact or in law, and the practical control of the property claimed; (2d) must be brought by the owner of the property, or whoever is entitled to the present possession, and (3d) is applicable only to *personal* property. (*Ibid*, 633 and 634.)

2d.—THE AFFIDAVIT.

Before any process shall be issued for the recovery of the possession of personal property, an affidavit must be made by the plaintiff, or by some one in his behalf, showing:

1st. That the plaintiff is the owner, or entitled to immediate possession of the property claimed, (particularly describing the same.)

2d. That such property is wrongfully withheld or detained by the defendant.

3d. The alleged cause of the detention or withholding thereof, according to affiant's best knowledge, information and belief.

4th. That said personal property has not been taken for any tax, fine or assessment, pursuant to Statute, or seized by virtue of an execution or attachment against the property of said plaintiff; or, if so seized, that it is exempt from such seizure by Statute.

5th. The actual value of said personal property. (Code, Sec. 74.)

A direct allegation that the plaintiff "is the owner" of the property claimed, is sufficient; it is not necessary to show how his title originated; but when the plaintiff claims merely a right of possession, he should show the facts which establish such a right. (Depew *vs.* Leal, 2 Abb., 135-6; Tillinghast & Shear. N. Y. Prac., 636.)

It has also been held in the New York Reports that in an action brought to recover the possession of exempt personal property seized on execution, the affidavit should state the character and value of the property with sufficient clearness to show on its face that it was exempt.

A general appearance in the action waives all irregularities in the affidavit.

3d.—THE UNDERTAKING OF PLAINTIFF.

The plaintiff must give a written undertaking, executed by one or more sufficient sureties, to be approved by the Trial Justice before whom the action is commenced, to the effect that they are bound in double the value of such property, as stated in the said affidavit:

1st. For the prosecution of the said action.

2d. For the return of said property to the defendant, if return thereof be adjudged; and,

3d. For the payment to him of such sum as may, for any cause, be recovered against the said plaintiff. (Code, Sec. 74.)

The Trial Justice before whom the action is commenced must endorse his approval on the undertaking. May require more than one surety; but no changes can be made in the undertaking without the sureties consent.

Amendments—The Court of Trial Justices may allow the plaintiff to strengthen the undertaking by additional sureties, or allow amendments, when the original ones are defective, no fraud being shown. (Code, Sec. 90, Subd. 11; Tillinghast & Shear. N Y. Prac., 641)

4th.—THE ENDORSEMENT ON THE AFFIDAVIT, AND THE SUMMONS TO DEFENDANT.

Endorsement on Affidavit.—On the receipt of the affidavit, and the undertaking, already described, the Trial Justice shall endorse, in writing, upon said affidavit, a direction to any Constable of the County in which the said Trial Justice shall reside, requiring the said Constable to take the property described therein from the defendant, and keep the same to be disposed of according to law.

Of the Summons to Defendant.—The Trial Justice shall, at the same time, issue a summons (with a copy of the undertaking; 17, Stat. 28.), directed to the defendant, requiring him to appear before the said Trial Justice at a time and place to be therein specified—not more than twelve days from the date thereof—to answer the complaint of said plaintiff; and the said summons shall contain a notice to the defendant, that, in case he shall fail to appear at the time and place therein mentioned, the plaintiff shall have judgment for the possession of the property described in said affidavit, with the costs and disbursements of said action. (Code., Sec. 74.)

As under A. A. 1875, No. 698 the shortest time in which a defendant can be required to appear and answer (except under exceptional circumstances) is five days from the service of the summons, the better practice would be, that the summons herein require the defendant to appear at a time and place therein specified, *not less* than five days from the date thereof.

5th.—JUSTIFICATION OF PLAINTIFF'S SURETIES.

Notice in Writing to be Served.—The defendant may at any time after such service and within two days before the return day of said summons, serve upon plaintiff, or upon the Constable who made such service, notice in writing that he excepts to the sureties in said bond or undertaking; and, if he fail to do so all objection thereto shall be waived. (Code, Sec. 74.)

If he excepts to the sureties, the defendant cannot reclaim the property, as mentioned in the subdivision 7th, of this chapter. (*Ibd*)

If such notice be served, the sureties shall justify, or give new sureties on the return day of said summons, who shall then appear and justify, or said Trial Justice shall order the said property delivered to defendant, and shall also render judgment for defendants costs and disbursements. (*Ibd.*)

Further time may be allowed for justification on good cause shown (Voorhees Code, 44; Tillinghast & Sher. Prac. 643.)

6TH.—DUTIES OF CONSTABLE.

The Constable to whom said affidavit, endorsement and summons shall be delivered, shall forthwith take the property described in said affidavit, if he can find the same, and shall keep the same in his custody. (*Ibd.*)

The Constable can take property only from the defendant or his agent; otherwise he would be liable as a trespasser.

Concealed Property.—If the property or any part thereof, be concealed in a building or enclosure, the Constable shall publically demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and if necessary, he may call to his aid the power of the County. (*Ibd.* Sec. 78.)

Keeping and Delivering Property.—When he has taken property, according to this chapter, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the same.—(*Ibd.*, Sec. 79.)

Service of Papers on Defendant.—After seizing the property, the Constable shall thereupon, without delay, serve upon the said defendant a copy of the affidavit, notice and summons, and undertaking, by delivering the same:

(1) To him personally, if he can be found in said County; or,

(2) To the agent of the defendant in whose possession said property shall be found; or,

(3) If neither can be found, by leaving such copies at the last or usual place of abode of the defendant, with some person of suitable age and discretion.

Constable's Return.—The Constable shall forthwith make a return of his proceedings thereon, and the manner of serving the same, to the Trial Justice who issued said summons.—(*Ibd.*, Sec. 74.)

7TH.—RE-DELIVERY TO DEFENDANT, AND DEFENDANT'S SECURITY.

At any time before the return-day of said summons, the defendant may, if he has not excepted to plaintiff's sureties, require the return of said property to him upon giving to the plaintiff, and filing same with the Trial Justice, a written undertaking, with one or more sureties, who shall justify before said Trial Justice, on the return-day of said sum-

mons, to the effect that they are bound in double the value of said property, as stated in plaintiff's affidavit, for the delivery thereof to said plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against such defendant; and if such return be not required before the return-day of said summons, the property shall be delivered to the said plaintiff.

Qualifications of Bail.—The qualifications of sureties are the same as prescribed for bail upon an order of arrest.—(See Bail—qualications of.)

They must justify in the same manner as bail upon arrest.—(See Bail.)

If they fail to justify before the return-day of the summons, the property shall be delivered to the plaintiff.—(*Ibd.*, Sec. 74.)

8th.—CLAIM OF PROPERTY BY A THIRD PERSON.

If the property taken be claimed by any other person than the defendant, or his agent, and such person shall make affidavit of his title thereto, and right to the possession thereof, stating the grounds of such right and title, and serve the same upon the Constable, the Constable shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the Constable against such claim, by an undertaking executed by two sufficient sureties, accompanied by their affidavits, that they are each worth double the value of the property as specified on the affidavit of the plaintiff, and *freeholders and householders* of the County.—(Code, Sec. 80.)

Note the important difference between the qualifications and those in the former cases:

1st. They must each be worth double the amount.
2d. They must be freeholders and householders of the County.

And no claim to such property, by any other person than the defendant or his agent, shall be valid against the Constable, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. (*Ibd.*)

This section appeals only to cases when the property is taken by the Constable in discharge of his duty, and not when it is wrongfully taken. (Tillinghast & Shearman's N. Y. Prac. 648.)

9th.—TRIAL OF CASE AND JUDGMENT.

The actions so commenced shall be tried in all respects as other actions are tried in Trial Justice Courts

The judgment for the plaintiff may be

For the possession, or,

The value thereof, in case a delivery cannot be had, and of damages for the detention. Joplin vs Carrier, 11 S. C. Rpts. 327.

If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be

For the return of the property, or,

For the value thereof in case a return cannot be had and damages for taking and withholding the same. An execution shall be issued thereon, and if the judgment be for the delivery of the possession of personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, compel the officer to satisfy any costs or damages, recovered by the same judgment, out of the personal property of the party against whom it was rendered, to be specified therein if a delivery thereof cannot be had. The execution shall be returnable within sixty days after its receipt by the officer to the Trial Justice who issued the same

In all actions for the recovery of the possession of personal property, as herein provided, if the property shall not have been delivered to plaintiff, or the defendant by answer shall claim a return thereof, the Trial Justice or jury shall assess the value thereof and the injury sustained by the prevailing party by reason of the taking or detention thereof, and the Trial Justice shall render judgment accordingly with costs and disbursements.

When Defendant Cannot be Found.—If it shall appear by the return of a Constable that he has taken the property described in the Plaintiff's affidavit, and that defendant cannot be found on whom service could be made, the Trial Justice may proceed with the cause in the same manner as though there had been a personal service. (Code, Sec. 80.)

10TH.—FORMS.

FORM NO. 75.—AFFIDAVIT OF PLAINTIFF.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——. } *Court of Trial Justice.*

C. D., PLAINTIFF,
Against
E. F., DEFENDANT. } *Affidavit to Recover Possession of Personal Property.*

Personally appeared before me A. B., a Trial Justice of the said County of the said State, C. D., plaintiff, who, being duly sworn, says:

I. That he is the owner of or that he is entitled to immediate possession of, by reason of, (state how he is entitled to possession) the following described property, to wit: (Here describe particularly the property.)

II. That the said property is wrongfully withheld or detained by the defendant above named.

III. That according to his best knowledge, information and belief the cause of such holding or detention is (here state cause in full).

IV. That the said property has not been taken for any tax, fine or assessment, pursuant to Statute, or seized by virtue of an execution or attachment against the same.

V. That the actual value of said personal property is the sum of —— dollars.

Sworn to and subscribed before me this —— day of ——, A. D. 18 —.
A. B.,
Trial Justice.
} C. D.

FORM NO. 76.—ENDORSEMENT ON AFFIDAVIT TO CONSTABLE.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.

By A. B , Trial Justice in and for said County of the said State.

To any lawful Constable of said County:

You are hereby required to take from the defendant the property described in the within affidavit and to keep the same, to be disposed of according to law.

Witness my hand and seal this —— day of ——, 18 —.
A. B.,
Trial Justice.

FORM NO. 77.—UNDERTAKING OF PLAINTIFFS' SURETIES.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.
} *Court of Trial Justice.*

C. D., PLAINTIFF,
Against
E. F., DEFENDANT.
} *Undertaking of Plaintiff's Sureties on Claim of Delivery of Personal Property.*

Whereas, the plaintiff in this action has made an affidavit that the defendant herein wrongfully detains certain personal property in the said affidavit mentioned, of the value of —— dollars, and the Plaintiff claims the immediate delivery of such property as provided for by law.

Now, therefore, and in consideration of the taking of said property, or any part thereof, by ——, of the County of ——, by virtue of the said affidavit and the requisitions thereupon endorsed, we the undersigned C. D., M. N. and O. P. do hereby undertake and become bound to the Defendant in the sum of (double the value of the property) dollars, for the prosecution of the action of the plaintiff, in the action in the Court of

Trial Justice, against the Defendant, for wrongfully detaining the said property, for the return to the defendant of the said property or so much thereof as shall be taken by virtue of the said affidavit and requisition thereupon endorsed if a return thereof shall be adjudged; and for the payment to him of such sum as may, for any cause, be recovered in this action against the plaintiff.

Dated ——, A. D. 18—. M. N. [L. S.]
O. P. [L. S.]

FORM NO. 78.—JUSTIFICATION OF SURETY.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.

M. N., one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and freeholder (or householder) within this State, and is worth the sum of (the amount for which he is bound) dollars, over all his debts and liabilities, and exclusive of property exempt by law from execution.

Sworn to before me this —— day of —— 18—. M. N.
A. B.
Trial Justice.

(The second surety will justify in like manner.)

CERTIFICATE OF TRIAL JUSTICE.

Venue as above)
I certify that on this —— day of ——, 18—, before me personally appeared the above named M. N. and O. P., known to me to be the individuals described in and who executed the above undertaking and severally acknowledged that they executed the same. A. B.,
Trial Justice.

FORM NO. 79.—SUMMONS TO DEFENDANT AND NOTICE.

THE STATE OF SOUTH CAROLINA,
COUNTY OF —— *Court of Trial Justice.*

C. D. Plaintiff *vs.* E. F., Defendant.

Summons to Defendant.

To E. F. Defendant:

Complaint having been made unto me by the above named plaintiff that you are in unlawful possession of certain personal property belonging to him, to wit: (*here state what property and describe it and also the means by which the defendant came into its possession,*)

And that the possession of the personal property aforesaid, having been demanded of you and you having refused to deliver it to its rightful owner.

These are therefore to require you to appear before me, in my office, in ——— on the day of ——— A. D. 18—, at — o'clock, M., to answer the complaint of the said plaintiff, or judgment will be awarded for the said plaintiff for the possession of the property described in his affidavit together with the costs and disbursements of this action

Given under my hand and seal at ——— the day of ———, one thousand eight hundred and

A. B.,
Trial Justice. [L. S.]

FORM NO. 81.—DEFENDANT'S UNDERTAKING TO PREVENT THE DELIVERY OF PERSONAL PROPERTY.

THE STATE OF SOUTH CAROLINA, } *Court of Trial Justice.*
COUNTY OF ——— }

C. D., Plaintiff *vs.* E. F., Defendant.

Undertaking on the part of the Defendant to prevent the delivery of personal property.

Whereas, the plaintiff in this action has claimed the delivery to him of certain personal property, specified in the affidavit made in behalf of the plaintiff for that purpose, of the alleged value of ——— dollars, and has caused the same to be taken by the Sheriff of the County of ———, pursuant to law, but the same has not yet been delivered to the plaintiff.

And whereas the defendant is desirous of having the said personal property returned to him.

Now, therefore, we the undersigned

Residing.

Residing.

Residing.

for the procuring such return, and in consideration thereof, do hereby undertake and become bound to the plaintiff in the sum of——————— dollars for the delivery of said property to the plaintiff, if such delivery shall be adjudged and for the payment to ——— of such sum as may in this action for any cause be recovered against the defendant.

Dated ———, 18—.

(Signatures.) ——————— [L. S.]
——————— [L. S.]
——————— [L. S.]

(Justification, etc., as in undertaking on behalf of plaintiff.)

FORM NO. 81.—APPROVAL OF TRIAL JUSTICE TO BE ENDORSED IN THE PRECEDING UNDERTAKING.

I approve of the within undertaking, both as to form and sufficiency of sureties.

A. B.,
Trial Justice.

FORM NO. 82.—NOTICE OF JUSTIFICATION TO BE ENDORSED UPON, OR ANNEXED TO THE UNDERTAKING.

(Title of Cause.)

To C. D. plaintiff (or plaintiff's attorney.)

Take notice, the sureties within named will justify as such before A. B., Esq., Trial Justice, on the ——— day of ———, 18—, at — o'clock noon.

(Date.)

(Signature of defendant or defendant's attorney.)

FORM NO. 83.—NOTICE OF EXCEPTION TO PLAINTIFFS SURETIES.

(Title of Cause.)

To A. B. Trial Justice.

Take notice that the defendant excepts to the sufficiency of the sureties to the undertaking in this action.

(Date.)

Yours, etc.,
(Signature of Defendant or his attorney.)

COIN.

By the Constitution of the United States, Sec. 8, C. 5, Congress shall have power to coin money, regulate the value thereof, and of foreign coin; also to provide for the punishment of counterfeiting the securities and current coin of the United States.

And by Sec. 10, C. 1, no State shall coin money, issue bills of credit, or make anything but gold and silver coin, a tender of payment of debts.

OFFENSES RELATING TO.

Counterfeiting.—Whoever shall be convicted of counterfeiting, or uttering, or attempting to pass, knowing it to be counterfeit, any of the following silver coin, to wit: a Spanish milled dollar, Johannes, half ditto, quarter ditto, eighth ditto, Moidure, half ditto, quarter ditto, eighth ditto, French crown, of four to the Louis d' or, English crown, Pistereen, Spanish doubloon Double pistole, half ditto English guinea, half ditto, quarter ditto, French guinea, German piece half ditto, Ducat; or of making or keeping in possession any stamp or

mould for coining, shall be sentenced to be imprisoned not less than one year nor more than seven years, and, also to pay such fine as may be judged expedient, at the discretion of the Judge who may try the case (Gen. Stat., Sec. 1,722.)

Issuing paper resembling Bank Notes.—It shall be unlawful for any person to issue, alter or publish any printed or engraved paper bearing a resemblance to a bank note; and any person who shall violate the provisions of this section, shall, upon indictment and conviction thereof, be fined and imprisoned at the discretion of the Court. (*Ibd.* Sec. 2d.)

On trials for Counterfeiting Notes of the Bank, the Bank to furnish Witnesses.—When information shall be given to the President of any Bank in South Carolina, by the Attorney General, or by any of the Solicitors of this State, that any person has been apprehended, and is to be tried in any County in this State for counterfeiting any of the notes of said Bank, or for passing such counterfeit note, knowing it to be false, or for stealing any note of the said Bank, it shall be the duty of the said Bank to cause its cashier, or some competent witness, to attend in person and give evidence in such trial, on pain of the forfeiture of one thousand dollars, for the use of the State, to be recovered by indictment. (*Ibd.* Sec. 3d.)

COMMITMENT.

Is the warrant or order by which a Court or Magistrate directs a ministerial officer to take a person to prison.

The commitment is either for a further hearing, or its final. (Bouv. L. Dic.)

When a statute appoints imprisonment, but limits no time, when, it is to be understood, that he shall be imprisoned presently. (Dalt. C. 170.)

A commitment is also called a mittimus.

1st.—Who may be Committed.
2d.—To what Place.
3d.—The Form of the Commitment.
4th.—That the Jailor shall Receive the Prisoner.
5th.—Shall Certify the Commitment.
6th.—Commitment Discharged.
7th.—Form of Commitment.

1st.—WHO MAY BE COMMITTED.

There is no doubt but that persons apprehended for offenses which are not bailable, and also all persons who neglect to offer bail for offenses which are bailable, must be committed. (2 Hawk., 116.) And it is

said, that wheresoever a justice is empowered by any Statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence, shall refuse to be bound, or to do such thing, the justice may commit him to jail, to remain there until he shall comply. (*Ibid.*)

If a prisoner be brought before a justice, expressly charged with felony, upon oath, the justice cannot discharge him, but must bail or commit him. (2 H. H., 121.)

But if he be charged with suspicion only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony, be in truth no felony in point of law, the justice may discharge him; as if a man be charged with felony for stealing a parcel of the freehold, or for carrying away what was delivered to him, and such like, for which, though there may be cause to bind him over as for a trespass, the justice may discharge him as to felony, because it is not felony. But if a man be killed by another, though it be by misadventure, or self-defense, (which is not properly felony) or in making an assault upon a minister of justice in execution of his office, (which is not at all felony) yet the justice ought not to discharge him; for he must undergo his trial for it; and therefore he must be committed, or at least bailed. (2 H. H, 121.)

2ND.—TO WHAT PLACE.

All felons shall be committed to the common jail, and not elsewhere. Generally if a man commit felony in one county, and be arrested for the same in another county, he shall be committed to jail in the county where he is taken. (Dalt. C., 170). Yet if he escapes, and is taken on fresh suit, in another county, he may be carried back to the county where he was first taken. (Dalt., C. 170.)

3D.—FORM OF THE COMMITMENT.

The formal requisites of the commitment are:

(1st.) Must be in writing, under hand and seal, and show the authority of the justice and the time and place of making it. (2 Hawk., 119; 3 Cranch, R 448).

(2nd). It must be in the name of the State, or if the person who makes it, expressing his office or authority.

(3d.) It should be directed to the keeper of the prison, and not generally to carry the party to prison. (2 Str., 934.)

(4th.) The prisoner should be described by his name and surname, or the name he gives as his.

(5th.) The commitment ought to state that the party has been charged on oath. (3 Cranch. R. 448).

(6th.) The particular crime charged against the prisoner, should be mentioned with commitment certainty, (2 H. H. 122; 1 Chit. Cr. Law, 110), otherwise it is against law, (2 Inst., 591).

(7th.) The commitment should point out the place of imprisonment, and merely direct that the party be taken to prison, (2 Str. 934; 1 Ld. Ray, 424).

(8th.) In a final commitment, the command to the keeper of the prison should be to keep the prisoner "until he shall be discharged by due course of Law," when the offense is not bailable; when it is bailable the jailor should be directed to keep the prisoner in his "said custody for want of sureties, or until he shall be discharged by due course of law." Where the commitment is not final, it is usual to commit the prisoner "for further hearing."

(9th.) It should set forth the place at which it was made, that it may appear to be within the jurisdiction of the justice. (2 Hawk., 119).

(10th.) It must also have a certain date of the year and day. (2 H. H. 123).

4th.—JAILOR SHALL RECEIVE THE PRISONER.

If the jailor shall refuse to receive a felon, or take anything for receiving him, he shall be punished for the same as for a jail delivery. (4 Ed. 3, C. 10; Dalt., C. 170). But if a man be committed for a felony, and the jailor will not receive him, the person that arrested him may, in such case, keep the prisoner in his own house, as it seemeth. (Dalt. C. 170).

But in other cases, it seems that regularly, no one can justify the detaining a prisoner in custody out of the common jail, unless there be some particular reason for so doing; as if a party be so dangerously sick, that it would apparently hazard his life to send him to jail, or there be evident danger of a *rescue* from rebels or the like. (2 Hawk., 118).

5th.—SHALL CERTIFY THE COMMITMENT.

By the 3 H. 7, C. 3; the sheriff or jailor shall certify the commitment to the next jail delivery.

6th.—COMMITMENT DISCHARGED.

It seems that a party legally commited for a crime, certainly appearing to have been done by some one or other, cannot be lawfully discharged by any one but the State, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose, by justices of jail delivery. But if a person be committed on a bare suspicion, without an indictment for a supposed crime, when afterwards it appears that there was none, as for the murder of a person thought to be dead, who afterwards is found to be alive, it hath been holden that he may be safely dismissed, without any further proceeding, for that he who suffers him to escape, is properly punishable only as an accessary to his supposed offense; and it is impossible to suppose that there should be an accessary when there can

be no principal ; and it would be hard to punish one for a contempt, in disregarding a commitment founded on a suspicion, appearing in so incontested a manner to be groundless. (2 Hawk., 121).

FORM NO. 84.—COMMITMENT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.

By A B., Trial Justice in and for the said county and the said State:

To M. N., Constable of the said County aforesaid, and to the keeper of the Common Jail in the County aforesaid :

These are to command you, forthwith to convey and deliver into the custody of the keeper of the said jail, the body of E. F., charged before me on the —— day of —— 18—, on the oath of C. D., with (*here specify the offense,*) and (*here state whether committed in default of bail, or that was committed in consequence of the offense not being bailable before a trial Justice*)

And you the said keeper, are hereby required to receive the said E. F., into your custody in the said jail, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal the —— day of —— A. D. 18—.

A. B. [L. S.]
Trial Justice.

COMPOUNDING.

Compounding a felony is the act of a party immediately aggrieved, who agrees with a thief or other felon that he will not prosecute him, on condition that he will return to him the goods stolen, or who takes a reward not to prosecute. This is an offense punishable by fine and imprisonment. The mere retaking by the owner of stolen goods is no offense, unless the offenders is not to be prosecuted.—(Hale P. C., 546 ; 1 Chit. Cr. Law, 4.)

An agreement to put an end to a misdemeanor has been considered to be illegal, as impeding the course of public justice ; but it is sometimes done after conviction, with the sanction of the Court, in cases where the offense principally and more immediately affects an individual ; the defendant being permitted to speak with the prosecutor before any judgment is pronounced, and a trivial punishment being inflicted if the prosecutor declares himself satisfied. And where an indictment for ill-treating a parish apprentice, a security for the fair expenses of the prosecution had been given by the defendant after conviction, upon an understanding that the Court would abate the period of his imprisonment, the security was held to be good, upon the ground that it was

given with the sanction of the Court, and to be considered as part of the punishment suffered by the defendant in expiation of his offense, in addition to the imprisonment inflicted upon him.

The compounding of information in Penal Statutes is a misdemeanor against public justice, by contributing to make the laws odious to the people.—(1 Russell on Cr., 135, 136.)

CONCEALED WEAPONS.

1st.—Carrying of.
2d.—Assaults and Batteries with.

1st.—CARRYING CONCEALED WEAPONS.

Any person, except peace officers while in the actual discharge of their duties as such officers, and persons carrying concealed weapons while upon their own premises, carrying a pistol, dirk, dagger, slung shot, metal knuckles, razors, or other similar deadly weapons usually used for the infliction of personal injury, concealed about his person, shall be guilty of a misdemeanor, and, upon conviction thereof, before a Court of competent jurisdiction, shall forfeit to the County the weapon so carried concealed, and be fined in a sum not more than two hundred dollars, or imprisoned for not more than twelve months, or both, in the discretion of the Court.—(17 Stat., 448.)

2d.—ASSAULTS AND BATTERIES WITH,

If any person be convicted of assault, assault and battery, assault, or assault and battery with intent to kill, or of manslaughter, and it shall appear upon the trial that either of said offenses shall have been committed with a deadly weapon of the character specified above, carried concealed upon the person of the defendant so convicted, the presiding Judge shall, in addition to the punishment provided by law for such offenses, inflict further punishment upon the person so convicted of confinement in the Penitentiary for not less than three months nor more than twelve months, with or without hard labor, or fined in a sum of not less than two hundred dollars, or both fined and imprisoned, at the discretion of the said Judge.—(*Ib.*, Sec. 4.)

CONFESSION.

(See Evidence.)

CONSPIRACY.

What Is.—Is the confederating of two or more persons, to injure a private person, or the interests of the public, or to do any unlawful act.

One person alone cannot be guilty of conspiracy; from whence it follows, that if all the defendants who are prosecuted for such a conspiracy be acquited but one, the acquittal of the rest is the acquittal of that one also; and upon the same ground it hath been holden, that no such prosecution is maintainable against a husband and wife, only because they are esteemed but as one person in law; but it is certain, that an action in the case, in the nature of a conspiracy, may be brought against one only; also it hath been resolved, that if such an action be brought against several persons, and all but one be acquitted, yet judgment may be given against that one only. (1 Hawk, 192.)

To injure private Person Indictable.—All confederacies, wrongfully to prejudice another, are misdemeanors at common law, whether the intent be to injure his person, his property, or his character; as a conspiracy to indict an innocent man of felony, falsely and maliciously, and this though the indictment be insufficient, or the Court before which it was taken had no jurisdiction to try the offense; (1. Hawk., C. 72. Sec. 3.) Conspiracy to marry a girl to get her fortune, is an indictable offense; (3 Ves., and B., 173.) so is a conspiracy to marry under a feigned name, for the purpose of setting up a ficticious claim to an estate, though no one is, in reality, injured; (Leach., 39.) An indictment lies for conspiring to cheat or defraud another. (2 B. and A., 204.)

Offense Complete by Agreement.—There are many cases in which the act would not be cognizable at law, which become the subject of indictment, when effected by several with a joint design. The verbal slander of another is not indictable, but it is so when several unite in a scheme to injure his character; (1 Lev. 6, 2.) Each person attending a theatre has a right to express his disapprobation of a piece, or a performer; but if several previously agree to condemn a play, or hiss an actor, they will be guilty of conspiracy. (2 Camp., 358.)

The offense of conspiracy is not confined to the prejudicing a particular individual; it may be to injure public trade, to affect public health, to violate public policy, to insult public justice, or to do any act, in itself illegal

A conspiracy to prevent a prosecution for a felony, is an indictable offense. (14 Ves., 165.)

So is a conspiracy to effect a restraint of trade. (13 East., 230.)

To Injure Public Interests.—A combination of workmen to raise their wages, of wine-merchants to sell pernicious liquors, of parish officers to marry paupers, and of any persons to procure the release of prisoners by ficticious bail, is indictable as a conspiracy. (8 Mod., 2 Ld. Ray., 1179. 6 East., 133; 4 Bur. 2106.)

A combination between private individuals to support each other in all undertakings, lawfully or otherwise, is illegal. In every case of conspiracy, the defense depends on the unlawful agreement, and not on the act which follows it; the latter is but evidence of the former; (2 Bur., 953.) And it is not necessary to constitute the offense, that any act should be done in pursuance of the agreement, or that any party was actually injured. (8 Mod., 321., 1 Leach, 39.)

Punishment.—A conviction for conspiracy renders the defendant incompetent as a juror or witness. (4 Bl. Com. 137.)

FORM NO. 85.—ARREST WARRANT FOR CONSPIRACY.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

A. B., Trial Justice, in and for said County and said State.

To any lawful Constable:

Whereas, complaint on oath has been made unto me by C D. that at ——— in the County and State aforesaid on the —— day of —— A. D. 18—, E. F. and G. H. did unlawfully confederate and conspire together to injure (*this deponent, or the public, as the case may be,*) by &c. These are, therefore, to command you to apprehend the said defendants, E. F. and G. H. and bring them before me to be dealt with according to law.

Given under my hand and seal the —— day of —— A. D , 18—.

A. B , [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———,

Personally appeared before me A. B , a Trial Justice of the said County and the said State, C. D. (*full name, the initials will not suffice*) who being duly sworn, says: that at ——— in said County and State, on the —— day of —— A. D . 18—, E. F. and G. H. (*give the name in full*) did unlawfully confederate and conspire together to injure (*this deponent, or the public, as the case may be*) by (*here state specially the matter of confederacy, and the acts done (if any) in pursuance thereof.*) That X. Y. and Z., are material witnesses thereto.

Sworn to &c.
A. B.,
Trial Justice
C. D.

CONSTABLES.

1. How Chosen and How Appointed
2. How to Qualify.
3. Method of Appointment.
4. Who Exempt from Serving as Constable.
5. Extent of Jurisdiction and his Authority.
6. Duty and Liability of.
7. Protection in Office.
8. Punishment and Removal

1.—HOW CHOSEN AND HOW APPOINTED.

How Chosen.—(1.) Constables shall be chosen in each county by the qualified electors thereof, in such manner as the General Assembly shall direct, for the term of two years. They shall reside in the county, city or beat for which they are elected.—(Const. Art. IV., Sec. 21, Genl Stat. Sec. 1, 215.

How Appointed.—(2.) Also a Judge, Trial Justice or Coroner may appoint a Constable to act by virtue of such appointment, only on a particular occasion, to be specified in writing.—(Gen. Stat., Sec. 2, 205

2.—HOW TO QUALIFY.

When any person shall be elected to the office of Constable, he shall repair to the clerk's office of the county, and, together with the evidence of his election, he shall lodge his bond in the form following:

STATE OF SOUTH CAROLINA.

Form of Bond.—Know all men by these presents that we (*name of person and sureties*) are held and firmly bound unto the State of South Carolina, in the penal sum of five hundred dollars, to the payment of which, well and truly to be made, we bind ourselves and each and every one of us, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this ——— day of ———Anno Domini one thousand eight hundred and —— and in the one hundred and ——— year of the independence of the United States of America.

Whereas the above bound C. D., hath been elected to the office of Constable: Now the condition of the above obligation is such, that if the above bound C. D. shall well and truly perform the duties of such office, as now or hereafter required by law, during the whole period he

may continue in said office, then the above obligation to be void and of non effect, or else to remain in full force and virtue.

Sealed and delivered in the presence of

——— [L. S.]
——— [L. S.]
——— [L. S.]

With good sureties, not less than two, or more than five, to be approved in writing, by the Clerk; and upon taking the following oaths, to wit:

Oaths.—"I do solemnly swear, (or affirm, as the case may be,) that I am duly qualified, according to the Constitution of the United States and of this State, to exercise the duties of the office to which I have been elected, (or appointed,) and that I will faithfully discharge, according to the best of my abilities, the duties thereof; that I recognize the supremacy of the Constitution and laws of the United States over the Constitution and laws of any State; and that I will support, protect and defend the Constitution of the United States, and the Constitution of South Carolina, as ratified by the people on the 16th day of April 1868. So help me God."

And "I do solemnly swear (or affirm) that in the execution of the office of Constable, to which I have been elected, I will, to the extent of my ability, enforce the penalties prescribed by law against gaming, and the keeping of gaming tables, and will not fail to bring to justice all violations of the same that may come within my view or knowledge. So help me God."

"And I further swear (or affirm) that I am under no promise, in honor or law, to share the profits of the office to which I have been elected (or appointed), and I will not, directly or indirectly, sell or dispose of said office, or the profits thereof; but will resign, or continue to the duties thereof, during the period fixed by law, if so long I live. So help me God."

Such person filing the bond and taking the oaths above, shall be entitled to a certificate from the Clerk, that he has filed his bond and taken the requisite oaths, and shall thenceforth be regarded as a regularly qualified Constable. Gen. Stat., Sec. 2 and 3, 206.

3D.—METHOD OF APPOINTMENT.

Form of Appointment of Special Constables.—In order to appoint a Special Constable, the Trial Justice may certify on the back of the process, in the following form:

"I hereby appoint C. D. Constable, to execute the within process, this —— day of ———, 18—.

(Signed,) A. B., [L. S.]
Trial Justice.

A person lawfully appointed as Constable, if he shall refuse to be sworn, may be bound over by a Magistrate, to appear at the next Court of Sessions, there to be indicted. (Dalt., C. 28.)

4TH.—WHO EXEMPT FROM SERVING AS.

Justices of the Peace, clergymen, attorneys, infants, lawyers, madmen, physicians, idiots, poor, old and sick persons, are exempted from serving as Constables. (Cro. Car., 389; N. Y. 112, 113.)

5TH.—EXTENT OF HIS JURISDICTION AND HIS AUTHORITY.

Extent of Jurisdiction.—Every qualified Constable shall be entitled to exercise his office throughout the County in which he may be elected or appointed. (Gen. Stat., Ch. 206, Sec. 4.)

Of his Authority.—Every Constable shall be a conservator of the peace; shall take into custody and carry before the nearest Trial Justice, any person or persons who may be, in his view, engaged in riotous conduct, or open violation of the peace, and refuse, upon his command, to desist therefrom; and, also, any person who may, in his view, commit any felony or misdemeanor; and for the purpose of preserving the peace, and, also, executing any criminal process, every Constable shall have the power of ordering out such *posse comitatus* to his assistance as may be necessary to enable him to discharge his duty; and any person refusing to obey his summons shall be liable to indictment and punishment as for a misdemeanor. (*Ibid*, Sec. 10.)

He may break open doors to see the peace kept, and may justify the beating of those who resist him. (1st Nelson's Justice, 229.)

6TH —DUTY AND LIABILITY OF.

A Constable is authorized, and shall be bound faithfully and promptly:

Execute Process.—(1.) To execute all processes lawfully directed to him by competent authority.

Make Return.—(2.) To make return, on oath, to the person issuing the process, to be endorsed in writing on the same, of his proceedings by virtue of it.

Executions and Attachments—Schedule.—(3.) In every case where he may levy an execution, or serve an attachment on personalty, he shall specify, by endorsement on the execution or attachment, or by schedule thereto annexed, a list of every article so levied on or attached, and forthwith lodge a copy of such list with the person issuing the process under which he acts

Sales—Advertisement.—(4.) In all cases of sale by a Constable, he shall give fifteen days notice, by advertisement, at three public places.

one of which shall be the Court House door, or shall publish the same at least three times in a newspaper published in the County, of the time and place of sales. (17 Stat., 192.)

Payment and Penalty for Default—How Recovered—Punishment.—In default of paying over the amount of any debt collected, to the party entitled, or his lawful agent, or to the Trial Justice, upon demand, or in default of returning to the defendant, upon demand, any overplus which may be in the hands of the Constable, he shall be liable to pay, in either case, to the party in interest and entitled to receive the original sum, and interest thereon, at the rate of ten per centum per month, recoverable before a Trial Justice, if not more than one hundred dollars in amount; if greater, before the Court of Common Pleas, besides being liable to be indicted and punished as for a misdemeanor. (Gen. Stat., 206.)

To Execute Process of Trial Justice Court.—Every Constable shall be bound to execute, when required, every lawful order, judgment and determination of the Trial Justice, and of any Trial Justice Court.

Penalty for Disobedience.—And for disobedience herein he shall be liable to be indicted and punished as for a high misdemeanor. (*Ibid*, Sec. 6.)

Process—How Served.—The service, by a Constable, of all process in the nature of a notice for personal appearance, shall be by delivering to the party a copy of the same, or by leaving the same at his most notorious place of residence. (*Ibid*, Sec. 11.)

To Return Execution Within Sixty Days.—It shall be the duty of every Constable, with whom an execution is lodged for collection, to proceed forthwith to execute the same, according to its exigency, unless ordered by the party in whose favor it was issued, to wait; and every execution shall be returned to the Trial Justice by whom it was issued, within sixty days from the date, and the Constable making such return shall set forth the full execution thereof, or the reasons for his failure. (*Ibid*, Sec. 12)

Liability for Neglect to Enforce or Return Executions.—When any Constable fails to do his duty in the enforcement or return of an execution, the party in whose favor the same may have been issued may apply to any Trial Justice for a rule against such defaulting Constable, requiring him to show cause, after the expiration of two days from the service of such rule, why the execution has not been enforced or returned, and on his failing to show cause sufficient, the said Justice may order the same to be made absolute, and the Constable shall be liable for the debt, interest and costs; and if he be unable to pay for the same, such liability shall be construed a breach of his official bond, and the same shall be recoverable in an action thereon against his securities. (*Ibid*, Sec. 13.)

Liability for Unauthorized Charges.—If any Constable charge any other fees, or for any other service than is allowed by law, such Con-

stable shall be liable to forfeit to the party injured ten times the amount of excess of fees so improperly charged, to be recovered by suit in the Court of Common Pleas.—(*Ibd.*, Sec. 16.)

To Attend Circuit Courts when Required.—All or so many of the Constables of any County as may be thereto required by the Sheriff, shall be bound to attend any Circuit Courts, shall be officers of Court, and perform the duties and services assigned them by the Sheriff and Presiding Judge; and each Constable so attending shall be entitled to receive the compensation of one dollar and fifty cents for each day's attendance.—(*Ibd.*, Sec. 9.)

7.—PROTECTION IN OFFICE.

If Assaulted.—If a Constable is assaulted in the execution of his office, he need not go back to the wall, as a private person ought to do; and if in the striving together the Constable kills the assailant, it is no felony; but if the Constable is killed, it shall be construed as premeditated murder.—(Hale's Pl., 37.)

8.—PUNISHMENT AND REMOVAL.

For Oppression, Fine and Imprisonment.—For oppression in office, whether by undue personal violence, taking an amount of property in unreasonable proportion to the sum to be collected, or for any wilful official misconduct, habitual negligence, habitual drunkenness, or fraud, when established to the satisfaction of a jury, upon indictment, a Constable shall be punished by imprisonment not exceeding one year, and fine not exceeding one thousand dollars, at the discretion of the Court, besides being liable to an action by the party aggrieved; but if any such action for damages shall be instituted against a Constable, and the plaintiff fails, he shall be liable to be mulcted in double or treble costs, by order and at the discretion of the Presiding Judge.—(*Ibd.*, Sec. 7.)

Office Vacant on Conviction.—Upon the conviction of any Constable by indictment, the Judge before whom the case may be tried shall have power, by order, to declare the convict to be removed from office, whereupon the office shall be deemed vacant.—(*Ibd.*, Sec. 8.)

Forfeit Fees.—In all cases in which Trial Justices shall fail to lodge in the offices of the Clerks of Court of their respective Counties recognizances taken before them for the appearance of witnesses, defendants, or prosecutors before the Courts of General Sessions for such County, or informations, or other papers made before them, and returnable to such Court at least ten days before the meeting of said Court, and such default shall arise from the neglect or improper delay of the Constable or other officer charged with the execution of any warrant or other process pertaining to the Court of General Sessions, such Constable shall forfeit his fees and be subject to a fine of five dollars for every such default, if, upon a rule to show cause, he shall fail to excuse himself to the satisfaction of the Court.—(*Ibd*, Sec. 14.)

CONTEMPT.

(See Attachment for.)

CONVICTS.

(See Malefactors).

CORN.

(See Burning.)

Stealing of.

At Common Law.—At common law, the stealing of gathered corn was punished as a larceny; but the taking it from the field was only a trespass, for which a civil action would lie But if the person shall cut it at one time and come again and take it away, it is felony.

Felony.—Whoever shall steal from the field any grain, or cotton, whether severed from the free hold or not, shall be deemed guilty of felony, and, on conviction thereof, shall be punished by imprisonment in the Penitentiary for not less than one year, nor more than five years, or in the jail for not less than three months, nor more than six months, or by a fine of not less than fifty dollars, nor more than five hundred dollars.—Gen. Stat., 715; 17 Stat, 77.

CORONER.

1. Election of.
2. Powers and Duties.
3. Trial Justices to Act as; In what Cases.
4. Vacancy in the office of.
5. Inquest on Dead Bodies.
6. Fees of.

1.—ELECTION OF CORONER.

Election of.—There shall be a general election for the election of County Coroners, held in each county, on the first Tuesday following the first Monday in November, 1874, and on the same day in every fourth year thereafter (Gen. Stat. C. XXI Sec. 1; 15 Stat. 788.)

2ND.— POWERS AND DUTIES OF.

To perform Duties of office until successors shall qualify.—Bond.—The County Coroners shall continue to perform the duties of their respective offices until their successors shall be elected and duly qualified; and before receiving commissions, they shall enter into bonds, to be executed by them and any number of sureties, not exceeding twelve nor less than two, to be approved by a majority of the Board of County Commissioners, that is to say: of the Coroner of Charleston County, ten thousand dollars; of the Coroner of each of the other counties, two thousand dollars. Said bond to be lodged in the office of the County Commissioners of their respective counties.

Oath.—Also, before he is is qualified to act, in addition to the oath of office, each Coroner shall take an oath to enforce, and, to the extent of his power and ability, carry into effect the law against gaming, and, in all cases, to bring to justice violations of the same, whenever such violations shall come within his view and knowledge.

Commission.—Upon complying with the above requirements, it shall be the duty of the Governor to issue a Commission to him accordingly. (Gen. Stat. C. XXI, Sec. 2, 3, 4, and 5).

May Appoint Deputies.—The Coroner of any County may appoint one or more deputies, to be approved by any Judge of the Court of Common Pleas of such County, who shall take and subscribe the oath prescribed in Section 30, Article II, of the Constitution, prior to entering upon the duties of said office. Said oath may be administered by any officer authorized to administer oaths in the County. (*Ibid*, Sec. 6.)

Certificate of Appointment of Deputies.—The appointment of such deputy shall be evidenced by a certificate thereof, signed by his principal, and shall continue during the pleasure of his principal; and every principal may take such bond and security from his deputy as he shall deem necessary to secure the faithful discharge of the duties of his appointment; and the principal shall, in all cases, be answerable for the neglect of duty or misconduct in office of his deputy. (*Ibid*, Sec 7.)

Not to Act as Jailor, Deputy Sheriff, &c.—No Coroner shall act as Jailor, Deputy Sheriff, or under any appointment by a Sheriff; and if any Coroner shall accept, or shall act under the appointment of the Sheriff of his County, his office shall be vacated, and the same shall be filled in the manner provided by law in case of vacancy from any other cause. (*Ibid*, Sec. 8.)

Not Bound to Act Except Specially Instructed.—He shall not be bound to act upon any papers in the Sheriff's office, except he is specially instructed; nor shall he be bound to embrace in his return to the Clerk's office any execution found in the Sheriff's office which is not entered on his book, or upon which he may not have taken any proceedings. (*Ibid*, Sec. 16.)

To Keep an Office in the Court House—To Keep Book of Inquisition.—The Coroner shall keep an office at the Court House in his

County, which shall have proper fixtures, and in which shall be kept his book of inquisitions, which book shall be public property, and shall be turned over to his successor in office.

To take Inquests.—Is empowered to take inquests of casual or violent deaths, where the dead body is lying within his County. If any person shall be bitten by a rattlesnake, and shall die suddenly and immediately of such bite, such death shall be deemed a violent and untimely death, and the Coroner shall have a view of such body, and make inquiry thereon as of any other body that came to any other violent or casual death.

To Act as Sheriff When.—When the Sheriff is a party plaintiff or defendant in any judicial process, execution, warrant, summons or notice to be served or executed, he shall serve or execute such process, etc.; in the discharge of which duties he shall incur such liabilities as would, by law, attach to their performance by the Sheriff himself.

To Keep a Suitable Book, in which to Enter his Proceedings as Sheriff.—While discharging the office of Sheriff, he shall provide a suitable book, in which he shall enter such executions or rather papers as he may be directed to enter by competent authority; and also all new writs, processes, executions or other papers, proper to be entered by a Sheriff; and also all his proceedings as Sheriff, in manner and form as Sheriffs are required by law to do; which book, or a certified copy thereof, he shall leave in the Sheriff's office, as a record. (*Ibid*, Secs. 9, 11, 12, 13 and 15.)

To Make a List of Prisoners—As soon as the Coroner shall enter upon the duties of Sheriff, he shall, in the presence of the Clerk of the Court, or Jailor of the County, if there be one, make a list of the prisoners in the jail, signed by himself and the Jailor, entered in the Coroner's book, and the original lodged in the Clerk's office. Upon retiring from the Sheriff's office, he shall turn over the papers of the office, and the prisoners in jail, to the succeeding Sheriff, in manner and form as Sheriffs may be required to execute the same duty. (*Ibid*, Sec. 17 and 18.)

Book of Inquisitions.—He shall keep a book, to be called "The Coroner's Book of Inquisition," into which he shall copy all inquests found within his County, together with the evidence taken before the jury, and all proceedings had before or after their finding.

Original Inquisitions to be Returned to Clerk—Endorsement on Return—Form of.—The original inquisition and evidence as taken by him, shall be returned, within ten days next after the finding thereof, to the Clerk of the Court of General Sessions for the County in which it was found; such inquisition and evidence to be endorsed in manner and form following:

FORM NO. 86.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

THE STATE

vs.

THE DEAD BODY OF E. D.

Inquisition taken this —— day of ———, A. D 18—, by ———, Coroner for said County, (or A. B., Trial Justice acting as Coroner for said County,) entered and recorded in Coroner's Book of Inquisitions, page ——, the —— day of ———, A. D. 18—." (*Ibid*, Sec. 19, 20 and 21.)

3D.—TRIAL JUSTICE TO ACT AS—IN WHAT CASES.

Trial Justice May Act as, When.—Any Trial Justice of the County is authorized and required to exercise all the powers, and discharge all the duties of the Coroner in holding inquests over the bodies of deceased persons, and taking all proper proceedings therein.

1st In all cases where the Coroner of the County in sick or absent; or,

2d. At a greater distance than fifteen miles from the place of such inquiry; or,

3d. When the office is vacant. (*Ibid*, Sec. 10.)

4TH.—VACANCY IN THE OFFICE OF.

Vacancy in Office.—In the event of a vacancy in the office of Coroner in any County of the State, whether by death, resignation or otherwise, the Governor shall, by proclamation, designate some Trial Justice of the County wherein the vacancy occurs, to act as Coroner until, by order of the Legislature, an election shall be had to fill the vacancy. (*Ibid*, Sec. 14.

5TH.—INQUESTS ON DEAD BODIES.

Mode of Summoning Jury.—When the Coroner shall be informed of, or shall see the dead body of any person, supposed to have come to a violent and untimely death, found lying within his County, he shall make out his warrant, directed to all or any of the Constables of his County, or to the Sheriff of his County requiring them, or any of them, forthwith to summon a jury of fourteen men of the county (to be selected within a radius of ten miles) to appear before him at the time and place specified in the warrant, which warrant shall be in this form;

FORM NO. 87.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

To the Sheriff (or to any Constable or Constables, as the case may be) of —— County, Greeting:

Form Warrant.—These are to require you immediately on receipt and sight hereof, to summon and warn verbally or otherwise, fourteen men of the said county, to be and appear before me, the Coroner of said County (or A. B, Trial Justice, acting as Coroner for said county,) at ———, within the said county, between the hours of — o'clock, on the ——— day of ——— 18—, then and there to inquire, upon the view of a body of a certain person there lying dead, how he came to his death. Fail not herein as you will answer the contrary at your peril.

Given under my hand and seal at ——— this ——— day of ——— A. D. ——, by me.

A. B., [L. S.]
Coroner for County,
(Or Trial Justice acting as Coroner for —— County.

Any Constable or Sheriff to Execute—Any Constable or Sheriff to whom such warrant shall come shall forthwith execute the same, and repair unto the place at the time therein mentioned, and make return, of the warrant, with his proceedings thereon, to the Coroner that granted it.

Penalty for Failure—And every Constable or Sheriff failing to perform the duty by such warrant required of him, or failing to return the same as aforesaid, shall forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action; and each and every person summoned and warned as aforesaid to be a juror, and failing to appear and act as such juror, shall also forfeit and pay the sum of twenty dollars, if without reasonable excuse, to be recovered by action.—(Gen. Stat. p. 752.)

Persons Subject to Jury Duty.—All persons subject to jury duty in the Circuit Courts shall be liable to serve as jurors on an inquest on a dead body found within their county.—(*Ibid,*)

Number of Jurors.—Of the jurors summoned and appearing, the Coroner shall select twelve or more, and administer to the foreman appointed by him an oath, in the following form:

Oath.—"You shall enquire and true presentment make on behalf of the State of South Carolina, in what manner A. B., here lying dead, came to his death, and you shall deliver a true verdict thereon, according to such evidence as shall be given, and according to your knowledge. So help you God."

To the other jurors he shall administer an oath in this form:

"The oath which your ——— have taken on his part, you shall well and truly observe and keep on your part: So help you God."—(*Ibid*, p. 753.")

Coroner's Charge to Jury.—The Jury so sworn shall be charged by the Coroner to declare, upon oath, whether the deceased came to his death by mischance and accident, or by felony, and if by felony, whether by his own or another's; and if by mischance, whether by the act of God or of man, and if he died of another's felony, who were principals and who accessories, who threatened him of life, or murder, and with what instrument he was struck or wounded, and if by mischance or accident, by the act of God, whether by hurt, fall, stroke, drowning or otherwise. And he shall also charge them to enquire of the persons that were present at the finding of the body, whether he was killed in the same place or elsewhere, and if elsewhere, by whom or how he was there brought, and of all other circumstances.—(*Ibid.*)

In case of Suicide.—If the jury find that the deceased came to his death by his own felony, they shall further inquire into the manner, names and instrument, and into all the circumstances of the death. (*Ibid.*)

Proclamation.—The jury being charged they shall stand together until proclamation be made for any that can give evidence to draw near, and they shall be heard. (*Ibid.*)

Power to Issue Warrants.—The Coroner shall have power to issue a warrant or warrants to summon witnesses, and examine before the jury any person present, whether summoned or not, concerning the death; and every person summoned is required to give evidence, and disregarding such summons, or refusing to testify, without such excuse as shall be lawful and sufficient, shall forfeit and pay the sum of twenty dollars, and shall be committed to jail by the Coroner, until the next Court of General Sessions, or until he testifies and is discharged by the Coroner; (the said forfeiture to be recovered by indictment,) and, in addition, shall be liable to be indicted at the next Court of General Sessions for the County, and, upon conviction, shall be fined and imprisoned at the discretion of the Court. And the Coroner shall bind such witness or witnesses so appearing, by recognizance, with good and sufficient surety, to appear at the next Court of General Sessions, to stand his trial; and the witnesses refusing to enter into such recognizance shall be forthwith committed to the Jail of the County, by commitment, under the hand and seal of the Coroner, there to be kept until they enter into such recognizance as before required. (*Ibid.*)

May Adjourn Jury.—He shall have power, if he deem it necessary, to adjourn the jury, either from day to day, or any other day and place, to receive evidence, binding the jurors severally by one recognizance, in

such amount as he shall think fit, for their appearance; which recognizance may by estreated, as to any of the connsors for default, by the Court of General Sessions.

Absent Jurors, how Supplied.—If all or any of the jurors should fail to re-appear at the day and place to which they were adjourned, the Coroner shall issue his warrant to supply the place of the absent jury or of so many of the jurors absent as may be necessary; and the jurors last summoned shall be sworn and charged as those first summoned were, and shall have the same powers, and be liable to the same penalties (*Ibd.* Sec. 9 & 10., P 754.)

Oath of Witnesses.—The witnesses examined upon the inquest shall be sworn by the Coroner, as follows:

"The evidence you shall give to this inquest concerning the death of A. B., here lying dead, shall be the truth, the whole truth, and nothing but the truth: So help you God."

Testimony to be taken in Writing.—The testimony of all the witnesses examined upon the inquest, must be taken down in writing by the Coroner, and signed by the witnesses, and if the testimony tends to criminate any person as concerned in the death of the deceased, the Coroner shall bind over the witness who gave it, in recognizance, with sufficient surety, to appear at the next Court of General Sessions to be holden for the County, to give evidence concerning the death; and such witness, for refusing to enter into such recognizance, shall be committed by the Coroner to the jail of the County, by warrant under his hand and seal, there to be kept until the Session of the Court, or until he shall enter into the recognizance as required. (*Ibd.* Sec. 11 & 12.)

Form of Verdict.—The jury having viewed the body, heard the evidence, and made inquiry into the cause and manner of the death, shall render their verdict thereon, in writing, to the Coroner, under their hands and seals, in the manner following, (*which shall pass by indenture interchangeably between the Coroner and jury,*) that is to say:

THE STATE OF SOUTH CAROLINA, }
——— County. }

An Inquisition indented, taken at ——— in —— County, the —— day of —— A. D. 18—, before A. B., Coroner (*or C. D. Trial Justice, acting as Coroner for said County*) upon the view of the body of E. F, of ———, then and there being dead, by the oaths of (*here insert the names of the jurors*) being a lawful jury of inquest, who, being charged and sworn to enquire for the State of South Carolina, where and by what means the said E. F., came to his death, upon their oaths do say," &c. (*inserting how, where, at what time, and by what instrument the deceased was killed*); and, if it shall appear that the deceased was wilfully killed by another, the inquisition must be concluded in this form:

"And so the jurors aforesaid, do say that the aforesaid, J. K., in man-

ner and form aforesaid, E. F., then and there feloniously did kill, against the peace and dignity of the said State aforesaid."

In case of Death by means Unknown.—If it shall appear that the deceased came to his death by means unknown to the jury, the inquisition shall conclude thus:

"That the said E. F., was killed and murdered by some person or persons (*or by some means*) to the jurors unknown, against the peace and dignity of the same State aforesaid."

Of Self-Murder.—If it appear that he died by self-murder, the requisition shall conclude thus:

"That the said E F., in manner and form of aforesaid, then and there, voluntarily and feloniously, himself did kill, against the peace and dignity of the same State aforsaid."

By Mischance.—If it appear that the deceased came to his death by mischance, the finding shall conclude;

"That A. B., in manner and form aforesaid, came to his death by misfortune, or accident."

By hands of Another.—If the proof shall be that the death was occasioned by the hands of another, the conclusion shall be:

"That J. K., the said E. F., by misfortune, and contrary to his will, in manner and form aforesaid did kill and slay."

Conclusion.—After the conclusion above, according to the facts, the inquisition shall end in this form:

"In witness thereof, I ——— Coroner aforesaid, and the jurors aforesaid, to this inquisition have interchangeably, put our hands and seals, the day above mentioned. A. B., [L. S.]

Coroner ——— County.

C. D., [L. S.]

Foreman of Jury of Inquest.

E. F. &c., [L. S.]

Jurors.

(*Ibd.* Sec., 13, 14, 15, 16, 17 & 18, P 755.)

Warrant in Case of Murder.—If the finding of the inquest be wilful killing by the hands or means of another, the Coroner shall forthwith issue his warrant, directed to the Sheriff, or to one of the Constables of the County, for all the persons implicated by said finding, which warrant shall be in this form:

FORM 98.

THE STATE OF SOUTH CAROLINA:

By A. B., Coroner (*or C. D. Trial Justice, acting as Coroner*) for ——— County:

To ——— Sheriff of ——— County:

Form Of.—Whereas, by inquisition by me held, on (*time and place inserted*) it was found that (*here insert the finding of jury.*)

These are, therefore, to command you forthwith to apprehend (*here*

insert the name or names of the accused) and bring him (*or them*) before me, to be dealt with according to law.

Given under my hand and seal this —— day of ——, A. D. 18—.

A. B., [L. S.]
Coroner.

(Or, C. D., *Trial Justice, Acting as Coroner.*)

Upon the return of the said warrant, and the arrest of the party or parties, the Coroner shall proceed to commit him, her or them, by warrant, in the form following:

FORM NO. 99.

THE STATE OF SOUTH CAROLINA, }
—— COUNTY. }

By A. B., Coroner, (or C. D., Trial Justice, acting as Coroner,) for —— County:

To the Sheriff or Jailor of —— County:

You are hereby commanded and required to keep in close confinement, in the jail of your County, (*here insert the name or names of the party or parties*) charged before me by the finding of a jury of inquest held on the —— day of ——, at ——, with (*here insert finding*) until he, (*she or they*) shall be thence delivered by due course of law.

Given under my hand and seal this —— day of ——, A. D. 18—.

A. B., [L. S.]
Coroner.

(Or, C. D., *Trial Justice, acting as Coroner.*)

Sheriff to Keep Persons Committed.—All Sheriffs and Jailers are required to receive and keep securely all persons so committed by the Coroner. (*Ibd* Sec. 19, 20 & 21, P. 756.)

Bind Over Party Killing By Mischance, and Witnesses.—If the finding of the inquest be that the deceased came to his death by mischance by the hands of another, the Coroner shall bind in recognizance, with sufficient surety the party against whom the verdict has been rendered, to appear at the next Court of General Sessions for the County, that the matter may be then and there inquired into; and the Coroner shall bind over by recognizance, with good surety, all such material witnesses as were examined by the jury of inquest. (*Ibd.* Sec. 22.)

Penalty for Burying a Body.—If any person shall bury, or cause to be buried, the dead body of a person supposed to have come to a violent death, before notice to the Coroner to examine the body, and before inquiry is made into the manner and circumstances of the death, such person shall be liable to indictment therefor before the next Court of

General Sessions, and, upon conviction, shall be fined and imprisoned at the discretion of the Presiding Judge. And the Coroner shall bind him in recognizance, with sufficient surety, to appear and stand his trial at the ensuing term of such court.

Body to be Taken up on Suspicion of Violent Death.—If the Coroner shall know, or be informed, of the interment of the body of a person, supposed to have come to a violent death, he shall proceed to impanel a jury as is hereinbefore directed, and order such body to be taken up, and shall conduct his examination into the cause and manner of the death, as though such body had not been buried.

Record of Body Long Dead.—If the body has been so long dead and buried, or so injured by improper keeping, as that the cause of the death cannot be ascertained upon the examination, the Coroner shall make record of the fact, stating its condition, by whom, and how long it has been kept or buried, the circumstances of the burial, and the identity, (if discovered;) which record shall be entered in his book, and returned, as any other inquisition, to the Clerk of the Court of General Sessions for the County.

Liability for Burial Without Inquest.—The person burying, or directing the burial, of the dead body of one supposed to have come to a casual or violent death, without due notice to the Coroner, upon conviction thereof, by indictment, in the Court of Sessions, shall be liable to be fined and imprisoned, at the discretion of the Court. And the Coroner shall bind him in recognizance, with sufficient surety, to appear and stand his trial at the ensuing term of Court. (*Ibid*, Sec. 22, 23, 24, 25 and 26, pp. 756 and 757.)

FEES OF CORONER.

Fees.—The Coroner shall be entitled to the following fees, and no other:

For every inquisition	$10 00
For recording proceedings in each inquisition in his book, per copy sheet of one hundred words	10

For performing duties of Sheriff, same fees as are allowed Sheriff for like services. (A. A. 1878, No. 540.)

CORRUPTION.

By Gen. Stat., Sec. 27, p. 729: If any public officer hereafter to be elected or appointed, whose authority is limited to a single election or judicial district, shall be guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud or oppression, he shall be liable to indictment, in which the privilege of traverse shall not be allowed; and, upon conviction thereof, shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year.

It shall be the duty of the presiding Judge, before whom such officer shall be tried, to cause a certified copy of the indictment to be immediately transmitted to the Governor, who shall, upon receipt thereof, declare, by proclamation his office vacant, and the same shall be filled as in case of the death or resignation of the incumbent. (*Ibid*, Sec. 28.)

COSTS.

(See Fees.)

COTTON—STEALING OF.

(See Corn—Stealing of.)

COUNTERFEITING.

(See Forgery.)

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(See Attorney.)

COURTS OF TRIAL JUSTICES.

1st.—Jurisdiction of.
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1st —JURISDICTION OF TRIAL JUSTICES.

Trial Justices shall have civil jurisdiction in the following actions, and no others:

1st In actions arising on contracts for the recovery of money only, if the sum claimed does not exceed one hundred dollars.

2d. An action for damages for injury to rights pertaining to the person, or the personal or real property, if the damages claimed do not exceed one hundred dollars, and in cases of bastardy. (In actions *ex delicto*, when damages claimed do not exceed one hundred dollars) (Rhodes *vs* Railroad Co , 6 S. C. Reports, 385)

3d. An action for a penalty, fine or forfeiture, where the amount claimed or forfeited does not exceed one hundred dollars.

4th. An action commenced by attachment of property, as now provided by Statute, if the debt and damages claimed does not exceed one hundred dollars.

5th. An action upon bond conditioned for the payment of money, not exceeding one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due Where the payments are to be made by installments, an action may be brought for each installment as it becomes due

6th. An action upon a surety bond taken by them, when the penalty or amount claimed does not exceed one hundred dollars.

7th. An action upon a judgment rendered in a Court of Trial Justice, or an inferior Court, in a city where such action is not prohibited by Section ninety-four of the Code of Procedure.

8th. To take and enter judgment on the confession of a defendant, where the amount confessed shall not exceed one hundred dollars, in the manner prescribed by law.

9th. An action for damages, fraud in the sale, purchase or exchange of personal property, if the damages claimed do not exceed one hundred dollars.

10th. An action to recover the possession of personal property claimed, the value of which, as stated in the affidavit of the plaintiff, his agent or attorney, shall not exceed one hundred dollars.—(Code, Sec 74.)

11th. Actions of ejectment against tenants holding over after the expiration of their leases or contracts for rent, against tenants at will, or who go in under a contract to serve another as a common laborer, or otherwise, and refusing or neglecting to quit when required by the person letting the same, and against those who have gone into the possession of lands or tenements of another without warrant of law.—16 Stat., 635; Gen Stat., 199, Secs. 27 & 28.

12th. Two Trial Justices have jurisdiction in cases of forcible entry and detainer, and of lessee holding over landlords after the determination of lease in writing.—(*Ibd.*, Secs. 25 and 26.)

Where a Trial Justice has jurisdiction of the case, his decision binds the parties until it is set aside in the mode prescribed by law.—McKelvey *vs.* S. C. R. R. Co., 6 Rich. N. S , 446.

2.—NO JURISDICTION IN CERTAIN CASES.

No Trial Justice shall have cognizance of a civil action :

1st. In which the State is a party, except for penalties not exceeding one hundred dollars.

2d. Nor where the title to real property shall come in question.

3d Nor of a civil action for an assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, where the damages claimed exceed one hundred dollars.—(Code, Sec. 81.)

According to the New York Practice, a Trial Justice has no jurisdiction in the following actions:

For injury to property amounting to an assault on the person.

For damages for fraud in the sale of real estate.

Against a justice for a false return; but *has* jurisdiction against a justice for wilfully refusing to issue an execution, or for wrongfully refusing to approve an appeal bond.—(Voorhees N. Y. Code, p. 43.)

It has been held that a plaintiff may charge less than an article or services are worth, and sue for such charge. (Goldsmith *vs.* Dent, 3 McC., 296.) But he may not give up a portion of principal or interest of a debt due by note or otherwise for the purpose of giving jurisdiction. (St. Amand *vs.* Gerry, 2 N. & M., 487.) But a party may bring separate actions on two notes, or a note and open account, although the two united would exceed the jurisdiction of the Court. (Parrot *vs.* Green, 1 McC., 531.)

3.—THE SUMMONS AND RETURN.

Form of.—There is no form of the summons in Trial Justices' Courts, prescribed either by the Code or General Statutes; but the summons may be in the same form as in the Court of Common Pleas.—(See Rule 15.)

The practice has been to conform to the provisions of the Act of 1839, (repealed 1868), "concerning the Office and Duties of Magistrates" namely:

Form of Summons.—The summons of the Magistrate should be under his hand and seal, together with a copy thereof, directed to any lawful Constable; should express plainly the names of the parties, the time and place of appearing, together with the nature of the demand; and, if it be on a contract, a precise copy of the note, bond, book account, or other demand set up, should be endorsed or annexed thereto.

The summons must mention the place of appearance; and, if it do not, the defendant may disregard it.

According to the New York Practice, the summons should state a cause of action; but, where the defendant was summoned to answer the plaintiff's "complaint for money due," or a summons to answer the plaintiff "for professional services" or to answer the complaint of J. W. B. for $100 damages in the action on contract, it was held sufficient. (Voorhees' N. Y. Annotated Code, page 45.)

The particular plea need not be stated. (*Ibid.*)

The endorsement was, "According to the provisions of Title 9,

Part 1, Ch. 20, of the Statute of Excise and the regulation of taverns and groceries"

Held, That the reference was sufficient (Perry *vs.* Tynen, 22 Barb. N. Y. Rpts., 137.)

Service.—The service shall be by delivering to the party a copy of the same, or by leaving the same at his most notorious place of residence. (Rev. Stat., p. 207.)

(See Rule 16th, as to time.)

Where a plaintiff is Constable, he may himself serve the summons. (Voorhees' N. Y An. Code, p. 47.)

Return.—The return of service should state the time and manner of service.

A return that the service was personal, or that it was "by copy" is a sufficient specification of the manner of service. (Legg *vs.* Steelman, 2 Con., 410; Hughes *vs.* Mulvey, 1 Sand., 92; Clinton's Digest N. Y. Rpts., p. 1915.)

After a plea to the merits, it is too late to object to a defect of the summons on its service. (*Ibid.*)

Whoever is deputized to serve a summons must make return; the same as required of a Constable.

4TH.—PROCURING THE ATTENDANCE OF WITNESSES AND TAKING TESTIMONY OUT OF COURT.

Punishment for Non-Attendance —Any Trial Justice, on the application of any party to a cause depending before him, shall have power, and is required, to issue a summons citing any person, whose testimony may be required in such cause, to appear before him at a certain time and place, not more than twenty miles from the residence of such witness, to give evidence, which summons shall be served personally, at least three days before such attendance is required; and if such person shall neglect or refuse to attend, the Trial Justice shall have power to issue a rule commanding such witness to be brought before him; or if any witness attending shall refuse to give evidence, without good cause shown, the Trial Justice may commit him to the jail of the County, as for a contempt, not longer than one day, as well as fine him in an amount not exceeding ten dollars; the costs of such rule, commitment and detention in custody, as well as the fine so imposed, may be levied of the goods and chattels of such recusant witness, on the order of such Trial Justice, directed to any Constable of the County, as in cases of execution. (Rev. Stat., C. XXV, Sec. 36, p. 202.)

In case it shall appear to the satisfaction of any Trial Justice aforesaid that the attendance of any witness whose testimony may be required in any case before him cannot be had, by reason of extreme age, sickness or infirmity, or of indispensible absence on public official duty, or in consequence of intended removal from the State, before the cause can be

otherwise ready for trial, or when such witness may be resident in another County, or without the limits of the State, to take the examination of such witness in writing, or cause the same to be done by another Trial Justice, to be used in evidence on the Trial of the case: *Provided*, That the parties to such cause shall have notice thereof in time to be present, if they, or either of them should choose to be present: *Provided, also*, That when such examination is so made by another, it shall be sealed up, with the title of the case endorsed, and conveyed by a disinterested person to the Trial Justice authorizing the same. (*Ibid*, Sec. 37.)

5TH.—OF THE TRIAL.

Trial by Jury—How Waived.—Trial by jury may be waived by the parties to a suit in a Court of Trial Justice:

1. By failing to appear at the trial.
2. By oral consent in open Court.
3. By refusing or failing to pay the fees of and for summoning a jury.

Judgment by Default.—If the summons be returned duly served, and the defendant make default, or appearing no good cause for continuance to be shown, the Trial Justice may proceed to hear the testimony and determine the case But the Trial Justice cannot enter judgment simply because the defendant does not appear, the plaintiff must prove his case. (See Rule 8) Must give *prima facie* evidence of his right to recover. This he may establish by his own oath and the oaths of competent witnesses.

Appearance.—The appearance may be either in person or by attorney; and all defects in the summons and service thereof are cured by appearance and answer without objection

The Trial Justice may continue his Court from day to day, as the exigencies of the case may require.

May non-suit the plaintiff for the insufficiency of his proof.

Must swear the witnesses; decide whether the witnesses are examined according to the rules of evidence; the order of proof and rebutting testimony; and as to re-calling a witness and re-opening the case.

But he cannot decide on his own knowledge of facts.

Nor try a case in which he is himself a material witness.

Nor non-suit a plaintiff, after the case is submitted and he has taken time for decision. (See Rules appended; Pressley's L. Mag., p. 100; Voorhees' N. Y. Code, pp. 62 and 63.

6TH.—OF THE JURY.

Either party to a suit before a Trial Justice is entitled to a trial by jury.

In civil cases, the parties may agree on a jury. When they do not agree, a jury shall be selected in the following manner:

Mode of Drawing a Jury.—The Sheriff, Constable, or other officer appointed by the Trial Justice, shall write and fold up eighteen ballots,

each containing the name of a respectable voter in the vicinity; he shall deliver the ballots to the Trial Justice, who shall put them into a box, and shake them together, and the officer shall draw out one, and the person so drawn shall be one of the jury, unless challenged by either party; and the officer shall thus proceed until he shall have drawn six, who shall not be challenged; but if the first twelve shall be challenged, and the parties do not agree to a choice, the last six shall be the jury.

In case of Deficiency.—When any of the six jurors so drawn cannot be had, or are disqualified by law to act in such case, and the parties do not supply the vacancy by agreement, the officer shall proceed to prepare in the manner before directed, ballots for three times the number thus deficient, which shall be disposed and drawn as above provided.—(Genl. Stat. CXXXV., Sec. 30 and 31, p 200.)

(It is clear that there can be no division of the number of challenges between the parties, plaintiff and defendant, each juror drawn may be challenged by either side, and so on, until the twelve challenges are exhausted.)

Defaulting Jurors.—If any juror so summoned shall neglect or refuse to appear, in obedience to such *venire*, and shall not within forty-eight hours, render to the Trial Justice who issued the *venire* a sufficient reason for his delinquency, he shall forfeit and pay the sum of two dollars to the Treasury of the County where the cause is tried, to be assessed by such Trial Justice, and collected on his warrant, without other process.—(*Ibid*, Sec. 32.)

Waiving Jury.—A party who has demanded a jury may waive it. A jury may be waived by non-appearance on the adjournment day, or by failure to pay jury fees in due season; and by consent, a cause may be tried by a jury of less than six jurors.—(Voorhees An. N. Y. Code, p. 62.)

Where, after a trial by jury had been commenced and adjourned, and on the adjournment day one of the jurors could not attend by reason of sickness, the defendant refused to proceed to try before the remaining four jurors, to have a talesman called, to have a new *venire* returnable immediately, or to take an adjournment on terms, held, the Justice did right to proceed at the plaintiff's instance with the trial without a jury. (Babcock *vs.* Hill, 35 Barb., 52 N. Y. Rpts.)

Venire.—A *venire* should not be delivered to a Constable by a Trial Justice until the parties have had an opportunity to object. If the *venire* is not returned at the time appointed, another should be issued, and the Justice cannot proceed to try without a jury, unless the jury is waived.—[Voorhees An. Code, p. 63.]

Objections to Jury.—Any irregularity in summoning the jury is ground for challenge to the array, and must be made in the first instance, or it comes too late, and all objections to the qualification of a juror is waived unless the objection is taken on the trial.—(*Ibid.*)

A Trial Justice cannot, on his own motion, object to the panel and issue a new *venire*, but he may, on his own motion, exclude a drunken man from the jury.—(*Ibid.*)

It is good cause of challenge to the array that the jury was summoned by a Constable who appeared for either party.

Oath of Jury.—After being organized, the jury may be sworn as follows:

"You shall well and truly try the issue joined in this case of ——— against ———, and a true verdict give according to the evidence."

Charging Jury.—The justice may instruct the jury as to the law, or leave them to find a verdict without instructions. If he does not instruct them, they are judges of law and fact; if he wrongfully instructs them, it is ground for reversal.—(*Ibd.*, p. 64.)

By consent the jury may retire without any one to attend them; but if any one is sworn to attend them, he must be a Constable.

Deliberation of Jury.—A Trial Justice has no right to answer questions, give them his minutes or have any intercourse with the jury, after they have retired, unless by consent of the parties.—(3 Clinton N. Y. Digest, Voorhees, p. 64.)

Verdict.—It is error to receive a verdict if no one is *present* on behalf of the plaintiff. He should be called when the jury are prepared to render their verdict, and if he does not appear, a judgment of non-suit may be entered. If the plaintiff is present, and is called when the jury render their verdict, no one appearing and answering, will not vitiate the judgment; and judgment will not be reversed because the return omits to state that the plaintiff was called when the jury came into Court to render their verdict. The verdict may be received on Sunday. There cannot be a special verdict. Verdict of "no cause of action" is a verdict for the defendant; and a verdict for six cents damages and six cents costs, is a verdict for defendant. A verdict for plaintiff for $10, and interest from a day specified, is sufficient; the justice may compute the interest. A verdict for one mill damages is a nullity. The jury may reconsider their verdict before it is entered. The verdict, although no judgment is entered on it, is a bar to a second action.

The jury may not find for costs; they follow of course.

On a conflict of evidence, the verdict of the jury is conclusive; but a verdict will be set aside that has no evidence to support it, or that is contrary to the uncontradicted testimony in the case. (See cases quoted on page 1950, Clinton's N. Y. Digest; Voorhees' Code, p. 65.)

7TH.—JUDGMENT AND EXECUTION.

If the plaintiff discontinue, or be non-suited, the Trial Justice shall award proper costs against such plaintiff; but if the demand or any part thereof be sustained, he shall give judgment therefor, together with the costs, and having entered the same in his Civil Docket, may issue exe-

cution for such amount so adjudged, which execution may be levied of the goods and chattels of the defendant, wherever they may be found within the State, at any time within sixty days from the date thereof, but on being returned not satisfied, may be renewed, and repeatedly, until satisfied, at any time within five years. (See Rule 12).

Where the trial is before a jury, the Trial Justice should render judgment and determine the amount of costs, not later than within five days, the time within which an appeal may be taken.

A judgment once entered, the power of the justice ceases; he cannot open or alter his judgment, even though it be entered by inadvertence for a wrong amount. Relief from such a judgment can only be obtained by an appeal from the judgment. (Voorhees, N. Y., Code p. 66), Parol evidence is inadmissable to contradict the docket of a justice. (*Ibd.*)

Nor will his ommission to keep his docket in the manner prescribed by law affect the validity of his judgment, (*Ibd.*)

8th.—ANSWER OF TITLE.

In every action brought in a Court of Trial Justice, when the title to real property shall come in question, the defendant may, either with or without other matter of defense, set forth in his answer, any matter showing that such title will come in question

Such answer shall be in writing, signed by the defendent, or his attorney, and delivered to the Trial Justice. The Trial Justice shall thereupon countersign the same and deliver it to the plaintiff. (Code, Sec. 82).

Title in Question—The simple allegation in the defendant's answer, that title to real property will come in question, is not of itself sufficient, on the defendant giving the requisite securety, to oust the Trial Justice of his jurisdiction; the question of title is a *matter of fact* for the Trial Justice to ascertain by proofs whether the title to real property will come in issue. (State Ex. Rel., Oneal vs. Fickling, 10th S. C., 302.)

An issue on a license to do an Act on real estate, which would otherwise be a trespass, does not present for trial "a claim of title to real property." (Voorhees N. Y., Code p. 52, note.)

The question of actual possession is not a question of title. And answer setting up an entry and claim to land under an executory contract for sale, held, not to constitute a claim of title (*Ibd.*)

The question of a right of way, is not a question of title, nor does a question of encroachment involve the title. (*Ibd.*)

The introduction of a deed as evidence not of title to land, but to establish some other fact, does not raise a question of title to land. (*Ibd.*)

Where a party is charged with a liability, arising out of his being the owner of land, and he disclaims being the owner of that land, this raises a question of title, (*Ibd.* Regnen vs. Hardon, 22 Law Jour., Rep. N. S. 2, B., 299).

Where the complaint alleged that the defendants unlawfully carried away a quantity of fire wood, the property of plaintiffs, and converted same, the defendants answered, that such firewood was cut on the Tonawanda Reservation; that such reservation is Indian lands, owned and occupied by the Seneca nation of Indians, and that the defendants are Seneca Indians; and that in their own right as such Indians, they converted said wood, as they lawfully might—held, that the answers set up title to lands. (Smith vs. Milton 13 How., 325, N. Y., Rept.; Vorhees Code 52).

Setting up Title—When the complaint is so drawn that the defendant can set up a title in his answer, and on giving the requisite security, oust the justice of his jurisdiction, but he omits to set up title, the justice retains his jurisdiction, and the defendant will be precluded from drawing it in question on the trial. (Voorhees N. Y., Annotated Code, p. 52.)

A plea of title is invalid unless it be in writing. (Sage vs Barnes, 9 John 365 N. Y., Repts, see Clinton's Digest, p. 1906).

Undertaking to be given—At the time of answering, the defendant shall deliver to the Trial Justice a written undertaking, executed by at least one sufficient surety, and approved by the Trial Justice, to the effect that if the plaintiff shall, within twenty days thereafter, deposit with the Trial Justice a summons and complaint in an action in the Circuit Court for the same cause, the defendent will, within twenty days after such deposit, give an admission in writing of the service thereof.

When the defendant is arrested in the action before the Trial Justice, the undertaking shall further provide that he will, at all times, render himself answerable to the process of the Court during the pending of the action, and to such as may be issued to enforce the judgment therein. In case of failure to comply with the undertaking, the surety shall be liable, not exceeding one hundred dollars. (Code, Sec. 83).

Action Discontinued.—Upon the delivery of the undertaking to the Trial Justice, the action before him shall be discontinued, and each party shall pay his own costs.

Costs.—The costs so paid by either party shall be allowed to him if he recover costs in the action to be brought for the same cause in the Circuit Court. If no such action be brought within thirty days after the delivery of the undertaking, the defendant's costs before the Trial Justice may be recovered of the plaintiff. (Code, Sec. 84.)

"The provisions of Sections 81, 82, 83 and 84 of the Code are in terms confined to the case of actions pending before a Trial Justice, and do not apply to special statutory proceedings of a summary character." (State *ex rel.* Oneal *vs.* Fickling, 10th S. C., 302.)

Hence they are not applicable to Sections 25, 26, 27 and 28 of C. XXV of the General Statutes.

Undertaking not Given.—If the undertaking be not delivered to the Trial Justice, he shall have jurisdiction of the cause, and shall proceed

therein; and the defendant shall be precluded, in his defense, from drawing the title in question. (Code, Sec. 85.)

The Same.—If, however, it appear on the trial, from the plaintiff's own showing, that the title to real property is in question, and such title shall be disputed by the defendant, the Trial Justice shall dismiss the action and render judgment against the plaintiff for the costs. (Code, Sec. 85.)

Ousting Trial Justice of Jurisdiction.—Where title to real estate is not pleaded, the Trial Justice is not ousted of his jurisdiction, because it may be necessary to prove title in order to sustain the action, unless such title is disputed by the defendant; and to entitle a defendant to a dismissal, he must call the Justice's attention specifically to the objection. Voorhees' N. Y. Code, pp. 54 and 55.)

Another Action May be Brought.—When a suit before a Trial Justice shall be discontinued by the delivery of an answer and undertaking, as provided in Sections 82, 83 and 84, the plaintiff may prosecute an action for the same cause in the Circuit Court, and shall complain for the same cause of action only on which he relied before the Trial Justice; and the answer of the defendant shall set up the same defense only which he made before the Trial Justice. (Code, Sec. 87.)

Costs.—If the judgment in the Circuit Court be for plaintiff, he shall recover costs; if for the defendant, he shall recover costs, except that upon a verdict he shall pay costs to the plaintiff, unless the Judge certify that the title to real property came in question on the trial. (*Ibid*, Sec. 88.)

Answer by Title as to Part—Transfer of Cases to Circuit Court.—If, in an action before a Trial Justice, the plaintiff have several causes of action, to one of which the defense of title to real property shall be interposed, and, as to such cause, the defendant shall deliver an answer and undertaking, as provided in Sections 82 and 83, and the Trial Justice shall discontinue the proceedings as to that cause, and the plaintiff may commence another action therefor in the Circuit Court. As to the other causes of action, the Trial Justice may continue his proceedings. (*Ibid*, Sec. 89)

9TH.—DOCKETING JUDGMENTS.

A Trial Justice, on the demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof, which may be filed and docketed in the office of the Clerk of the County where the judgment was rendered. The time of the receipt of the transcript by the Clerk shall be noted thereon, and entered on the docket; and from that time the judgment shall be a judgment of the Circuit Court. A certified transcipt of such judgment may be filed and docketed in the Clerk's office of any other County where the judgment was rendered. But no such judgment for a less sum than twenty-five dollars, exclusive of costs, shall be so docketed or enforced against real property. (Code, Sec. 90.)

10TH.—RULES.

The following Rules shall be observed in the Courts of Trial Justices:

RULE I.

The pleadings in these Courts are:

1. The Complaint by the Plaintiff;
2. The Answer by the Defendant.

RULE II.

The pleadings may be oral or in writing: If oral, the substance of them shall be entered by the Trial Justice on his docket; if in writing, they shall be filed by him, and a reference to them shall be made on the docket.

RULE III.

The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

RULE IV.

The answer may contain a denial of the complaint, or any part thereof, and also a notice, in a plain and direct manner, of any facts constituting a defense or counter claim.

RULE V.

Pleadings are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended.

RULE VI.

Either party may demur to a pleading of his adversary, or any part thereof, when it is not sufficiently explicit to enable him to understand it, or it contains no cause of action or defense, although it be taken as true.

RULE VII.

If the Court deem the objection well founded, it shall order the pleading to be amended; and, if the party refuse to amend, the defective pleading shall be disregarded.

RULE VIII.

In case a defendant does not appear and answer, the plaintiff cannot recover without proving his case.

RULE IX.

In an action or defense founded upon an account, or an instrument for the payment of money only, it shall be sufficient for a party to deliver the account or instrument to the Court, and to state that there

is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set off.

Rule X.

A variance between the proof on the trial and the allegations in a pleading shall be disregarded, as immaterial, unless the Court shall be satisfied that the adverse party has been misled to his prejudice thereby.

Rule XI.

The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, when, by such amendment, substantial justice will be promoted. If the amendment be made after the joining of the issue, and it be made to appear to the satisfaction of the Court, by oath, that an adjournment is necessary to the adverse party, in consequence of such an amendment an adjournment shall be granted. The Court may also, in its discretion, require, as a condition of an amendment, the payment of costs to the adverse party.

Rule XII.

Execution may be issued on a judgment heretofore or hereafter rendered in Trial Justice's Courts, at any time within five years after the rendition thereof, and shall be returnable within sixty days from the date of the same.

Rule XIII.

If the judgment be docketed with the Clerk of the Circuit Court, the execution shall be issued by him to the Sheriff of the County, and have the same effect, and be executed in the same manner as other executions and judgments of the Circuit Court.

Rule XIV.

The Court may, at the joining of the issue, require either party at the request of the other, at that or some other specified time, to exhibit his account or state the nature thereof as far forth as may be in his power, and in case of his default, preclude him from giving evidence of such parts thereof as shall not have been so exhibited or stated.

Rule XV.

The provisions of the Court of procedure respecting forms of action, parties to actions, the rules of evidence, the times of commencing actions, and the service of process upon corporations, shall apply to these Courts.

The defendant may, on the return of process, and before swearnig, make an offer, in writing, to allow judgment to be taken against him for an amount to be stated in such paper, with costs. The plaintiff shall, thereupon, and before any other proceedings shall be had on the action, determine whether he will accept or reject such offer. If he accept the offer and give notice thereof in writing, the Trial Justice shall file the offer and the acceptance thereof, and render judgment accordingly. If the notice of acceptance be not given and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.—(Code, Sec. 911.)

Rule XVI.

When more than twenty-five dollars is demanded on a complaint, the same shall be served on the defendant twenty days, and where less than that sum is demanded, five days before the day therein fixed for trial: *Provided*, That if the plaintiff shall make out that he is apprehensive of losing his debt by such delay, and the Trial Justice considers that there is good reason therefor, (the ground of such apprehension being set forth in an affidavit and served, with a copy of the complaint) he may make such process, returnable in such time as the justice of the case may require.

IIth.—FORMS.

Form No. 100.—Summons

STATE OF SOUTH CAROLINA, } *Trial Justice's Summons.*
County of ———. }

By A. B. Trial Justice in and for the said County of the said State:

To any Lawful Constable:

Complaint having been made unto me by C. D., that E. F. is indebted to ——— in the sum of ——— dollars, on a (*note or account, etc.*) a copy whereof is hereto annexed, and that he refuses payment.

These are, therefore, to require you to summons the said defendant to appear before me, in my office, in ——— on the ——— day of ——— 18—, at — o'clock — M., to answer the said complaint, or judgment will be given against —— by default.

Given under my hand and seal at ——— the —— day of ——, A. D. 18—.

Statement. A. B. [L. S.]
Costs, *Trial Justice.*
$——

FORM NO. 101 —TRIAL JUSTICE'S SUMMONS AND COMPLAINT.

SOUTH CAROLINA,
COUNTY OF ———. } *Summons.*

By A. B., Trial Justice in and for said County of the said State.

To any Lawful Constable :

Complaint having been made unto me by C. D., that E. F. is indebted to —— in the sum of ——— dollars for ——— (*as appears by the complaint hereto appended*), and that ——— refuses payment.

These are, therefore, to require you to summon the said defendant to appear before me, in ——— on the ——— day of ——— 18—. at — o'clock — M., to answer the said complaint, or judgment will be given against ——— by default.

Given under my hand and seal at ———, the —— day of ——— A. D. 18—.

A. B., [L. S.]
Trial Justice.

Statement.
$——— debt.
interest.
costs.
$———

COMPLAINT.

The complaint of the above named complainant respectfully shows to this Court that (*here follow—*

1*st. A plain statement of facts constituting a cause of action.*

2*d. A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof should be stated.*)

(Signature.)

Verification.

THE STATE OF SOUTH CAROLINA,
COUNTY OF —— }

C. D., plaintiff in this action, being duly sworn, says that the foregoing complaint is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

(Signed) C. D.

Sworn to before me this ——— day of ———, 18—.

A. B., *Trial Justice.*

FORM NO. 102.—CONSTABLE'S RETURN OF SERVICE.

I hereby certify, that on the ---- day of ——, 18—, I served E. F., the defendant within named, with the within summons (and complaint,) in this action, by delivering a copy thereof to him personally, and leaving the same with him.

(Date.) (*Signature.*)

FORM NO. 103.—ANSWER—COMMON FORM.

THE STATE OF SOUTH CAROLINA, } *Court of Trial Justice.*
COUNTY OF———. }

C. D., Plaintiff,
against
C. F., Defendant. } (*Cause of Action.*)

The defendant, (*or where he answers by attorney, by M. N., his attorney,*) answering the complaint herein, alleges (*or denies*) : (*Here set forth defenses and counter-claims, separately stating and numbering them.*) Wherefore defendant demands, &c.

(*Signature.*)

VERIFICATION.

(*As in the preceding Complaint.*)

FORM NO. 104.—DEMURRER TO COMPLAINT.

(Title of Cause.)

The defendant demurs to the Complaint herein (*or to such or such, stated in the Complaint herein,*) for the ground that it appears upon the face of the Complaint :

(*If for want of jurisdiction as to the subject.*)

That the Court has no jurisdiction of the subject of this action.

(*If for incapacity to sue.*)

That the plaintiff has not legal capacity to sue.

(*If for pendency of another action.*)

That there is another action pending between the same parties for the same cause.

(*If for a defect of parties.*)

That there is a defect of parties, plaintiff (or defendant,) in the omission of (*designating the omitted party either by name or by the character in which he is referred to in the Complaint.*)

(*If for misjoinder of actions.*)

That several causes of action have been improperly united, one being (*briefly designating it,—thus*) : A money demand on contract, and the

second, a claim to recover damages for fraud in the sale of personal property.

(*If for insufficiency.*)

That the Complaint does not state facts sufficient to constitute a cause of action. (Code, Sec. 167.)

(*Signature.*)

NOTE.—According to the New York Practice—Voorhees N. Y. Code. p. 60; Mayor of N. Y. *vs.* Mason, 1 Abb., 344. A demurrer is the only proper mode of objecting to a pleading in a Justice's Court. Objections to the Complaint not taken by demurrer are waived.

FORM NO. 105.—AMENDED COMPLAINT.

(Title of cause.)

The plaintiff by this, his amended Complaint, alleges:

(*Continue as in an original Complaint.*)

FORM NO. 106.—JUDGMENT BY DEFAULT.

(Title of the cause.)

The summons herein having been served on the defendant, more than (*See Rule 16th as to Notice,*) —— days before this date, and he not having appeared, and no answer or demurrer having been served on the plaintiff, and the said plaintiff having duly proved his claim, it is hereupon adjudged that the plaintiff C. D., recover against the defendant E. F., the sum of —— dollars and interest, (*if any,*) from —— to —— together with —— dollars costs and disbursments, amounting in the whole to —— dollars.

(Date.) A. B.
Trial Justice.

FORM NO. 107.—JUDGMENT ON VERDICT.

(Title of cause.)

The issues in this action having been brought on for trial before the Court of A. B., Trial Justice, and a jury on the —— day of ——, 18— and the issues having been tried and a verdict for the plaintiff (*or defendant,*) having been duly rendered on the —— day of ——, 18—, it is hereupon adjudged that the said plaintiff do recover of the said defendant, the sum of —— dollars, found by the jury, with —— dollars costs, *or that the defendant having judgment against the plaintiff, upon the issues in this action, for the sum of —— dollars, together with costs and disbursements of this action, amounting in the whole to —— dollars.*

(Date.) A. B.
Trial Justice.

FORM NO. 108.—EXECUTION AGAINST PROPERTY.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

By A. B., Trial Justice in and for the said county and the said State,

To any Lawful Constable:

You are hereby commanded, that of the goods and chattels of E. F, you levy the sum of —— dollars —— cents; which C. D., before the Court of Trial Justice A. B., did recover for a debt; also —— dollars costs, and — per cent. commissions.

Given under my hand and seal at ———, the — day of ——, one thousand eight hundred and ——.

A. B [L. S.]
Trial Justice

FORM NO. 109.—TRANSCRIPT OF JUDGMENT.

Names of Parties against whom Judgments have been Obtained.	ATTORNEY.
E. F. Defendant.	

Names of Parties in whose Favor Judgments have been Obtained.	ATTORNEY.
C. D., Plaintiff.	

DAMAGES AND COSTS.

Amount of Judgment	$		Amn't brought forward...	$	
Amount Forward.	$		Total Amount Costs and Disbursements..... ...	$	

Filed on the —— day of ———, 18—.

OFFICE. ———, 18—.

I certify that the foregoing is a correct transcript from the Docket of Judgments kept in my office.

A B.,
Trial Justice.

FORM NO. 110.—JURY SUMMONS.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

SIR: You are hereby summoned to be and appear personally, before the Court of Trial Justice, A. B., to be holden at ———, on the —— day of ——, A. D. 18—, at — o'clock — M., to serve as a juror. Hereof fail not on pain of forfeiting the lawful penalty in such cases provided.

(Date.) A. B.,
Trial Justice.

FORM NO. 111.—SUMMONS TO DEFAULTING JUROR.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

A. B., *Trial Justice.*

To any lawful Constable:

You are hereby commanded to summon C. D., to show cause before me at — o'clock M., on ——, the — day of ——, A. D. 18—, why he should not be fined according to law, for failing to attend as a juror, when duly summoned by order of A. B., Trial Justice, component part of a Court, which he, the said Trial Justice, was authorized to organize.

Witness my hand and seal this —— day of ——, A. D. 18—.

A. B., [L. S.]
Trial Justice.

(Under this head, also, see Apprentice, Attachment, Decrees, Ejectment, Forcible Entry and Detainer, Jury, Landlord and Tenant, or for the organization of a Court under any particular head, see such head.)

CURSING.

(*See Profane Swearing.*)

DAMS AND DRAINS.

No Drains to be Erected or Water Let off to the Injury of Others.—No person or persons shall be permitted or allowed to make or keep up any dams or banks to stop the course of any waters so as to overflow the lands of any other person, without the consent of such person first had and obtained; nor shall any person or persons be permitted or allowed to let off any reserved water, to injure the crops upon the grounds of other persons.—(Gen. Stat., 292.)

To be Opened by the 10th of March.—Penalty.—Every person who shall keep water during the winter upon grounds on which rice shall be planted the ensuing spring, shall, on the tenth of March in each year, open the dams which keep up the water, in a sufficient manner for letting off the same; and if any person or persons shall neglect so to do on or before the time aforesaid, he or she shall forfeit and pay the sum of five hundred dollars for every such neglect, to be recovered upon the complaint of any person or persons through whose lands such water may pass, and it shall and may be lawful for such persons to sue for the same, in any Court of competent jurisdiction in the County where such offense is committed, and the one-half shall be paid to the informer, and the other half to the use of the poor of such County.—(*Ib.*)

Remedy for Neglect.—Proviso.—Where any person has neglected to open his or her dams in a sufficient manner for letting the water off the grounds before described, on or before the tenth of March in every year, in manner aforesaid, it shall and may be lawful for any person who may be affected thereby, at any time after the day aforesaid in every year, either by himself or herself, or his or her overseer, agent, attorney or trustee, to apply to any Trial Justice in the County for a warrant of survey, who shall thereupon notify the defendant of the complaint made against him, with the time and place of meeting, and summon three freeholders, disinterested persons, of the neighborhood where the cause of complaint shall lie, one of whom shall be chosen by the defendant, and, in case of his refusal, then by the Trial Justice, another by the complainant, and the third by the Trial Justice, who (*being first sworn before such Trial Justice to determine the matter in dispute justly and impartially*) shall forthwith proceed to view the obstructions complained of, and if, on view thereof, the said freeholders, or a majority of them, shall be of opinion that such obstructions do or may prevent the party complaining from planting his or her crop of rice in

proper time, then and in such case it shall and may be lawful for the said freeholders, or a majority of them, to cause the same to be immediately opened or removed in any way or manner they shall think necessary, for the purpose of giving the most effective relief to the party complaining, whereupon the defendant shall be obliged to pay all expenses attending such survey: *Provided, always,* That nothing herein contained shall extend, or be construed to extend, to impose any penalty on any person or persons, or to cause his or her dams or banks to be opened, who shall have made through his or her own hands a sufficient drain or drains (*of which the said freeholders shall be the judges*) to carry off the waters passing through the same in as expeditious a manner as they could have passed through the natural course or channel in case no dams had been erected.—(*Ib.*)

Redress for obstructing surplus waters on rice land.—It shall and may be lawful for any person, at any time between the tenth day of March and the first day of November in every year, to apply in manner aforesaid for a warrant of survey on any obstructions which he or she may conceive do impede the conveying off of any surplus water on his or her rice grounds, and which, by remaining thereon, may prove any way injurious, or shall, at any time hereafter, make or keep up any dam or dams which shall stop the course of any water so as to overflow, the lands of any other person or persons whatever, without the consent of such person or persons first had and obtained, and which shall be injurious to the said person or persons, then, in either of such cases, the said Trial Justice and the freeholders appointed by him shall proceed in the same manner as is directed in the forgoing Section;

Provided, always, That if, in either of the cases last mentioned, the defendant shall neglect or refuse to attend at the survey to choose a freeholder as aforesaid, then the three freeholders who shall have been summoned by a Trial Justice shall proceed to determine the matter in dispute in the same manner as if the defendant had been present and had chosen a freeholder; which said freeholders shall, in both cases, certify to the said Trial Justice, under their hands, what shall have been by them done in the premises; the expenses attending which survey shall be paid by the party against whom the award of the said freeholders shall be given, (*Ib*).

Penalty for replacing obstructions and opposing opening of dams—If any person, either by himself or herself, or his or her overseer, agent, trustee, or attorney, or servant or any other person or persons acting for him or her, shall presume to stop up any dam or dams, or replace any obstructions, in any manner whatsoever, which has or have been ordered to be opened or removed by any freeholders as aforesaid, or which has or have been opened or removed by himself or herself, or his or her overseer, agent, attorney, or trustee, or by order of each of them, on the said tenth day of March, until the tenth of July, every person so offending shall forfeit and pay the sum of one thousand

dollars, to be recovered and disposed of in manner as aforesaid; and if any person shall presume to obstruct, impede, or otherwise hinder or interrupt the opening of any dam or dams, or the removing of any obstructions ordered to be opened or removed by the freeholders as aforesaid, every person so offending shall forfeit and pay for every such offense the sum of two thousand five hundred dollars, to be recovered and disposed of in manner aforesaid, (*Ib*).

Inadequate dams to be strengthened. Dams to have wasteways.—When any dam or dams have been made, or shall hereafter be made, for the purpose of forming reservoirs of water, without a sufficient wasteway, and which are now, or shall hereafter be found inadequate to sustain the weight of water against the same, the owner of such dam or dams shall immediately, or as soon as may be, cause the same to be enlarged and strengthened, where they are already made and insufficient, and such as may hereafter be made, to be erected in a substantial manner, with a sufficient wasteway.

Penalty for omission or neglect.—And if any person shall neglect to strengthen his or her dam or dams, already erected for the purpose aforesaid, where necessary, or shall hereafter erect any dam or dams for the purpose aforesaid, and which (*in either case*) in the opinion of three freeholders, or a majority of them, (*to be appointed and proceed in manner hereinbefore mentioned respecting surveys of dams across rice grounds*), is or are not made and regulated in manner hereby prescribed, every person so offending shall, on complaint of any person or persons liable to be affected thereby, and on conviction thereof in any Court of record in the County where such offense is commited, forfeit and pay the sum of five hundred dollars for every such offense, which may be sued for, and, if recovered, be disposed in manner aforesaid.

Provisor.—*Provided, always, nevertheless,* That nothing herein contained shall extend, or be construed to extend, to subject any persons who have made or shall make any bank or dams to reserve water, to pay any damages which may be sustained by the breaking of the said banks or dams, when it is occasioned by such violent rains and floods as would have caused such damages to be sustained on the land in question, though no such bank or dam had been made, whereof the freeholders aforesaid shall be the judges, anything hereunto the contrary notwithstanding, (*Ib*).

Residents only to be Summoned to Survey Rice Lands—Penalty for Non-Attendance.—Every person to be summoned as aforesaid shall be a resident in the County and neighborhood where his attendance shall be required, and upon being duly summoned, and attending any survey as aforesaid, shall be entitled to receive the sum of one dollar and fifty cents per day, each, and five cents mileage going and returning from the place of meeting, for every such attendance, to be paid by the person against whom the verdict of the freeholders shall be given; and in case of the non-attendance of any person, a resident and summoned

as aforesaid, (unless prevented by sickness, or some reasonable excuse to be made upon oath to the satisfaction of such Magistrate,) then, and in such case, every such person so neglecting to attend when summoned as aforesaid, and without such sufficient excuse as aforesaid, shall forfeit and pay the sum of fifty dollars per day for every such neglect or refusal. (*Ibid.*)

Penalty on Trial Justice for Neglect of Duty.—In case any Trial Justice shall neglect or refuse to put the provisions of this Chapter in execution, he shall forfeit the sum of twenty dollars, which penalty shall and may be sued for and recovered by action in any Court of record in this State, and shall be applied, one-half to the State, to be disposed of by the General Assembly, and the other half to him or them who will inform and sue for the same. (*Ibid.*)

Not to Keep Water on Lands of Others.—Nothing contained herein shall be construed to authorize any person or persons to keep water at any time on any lands other than his, her or their own. (*Ibid.*)

Obstructing Ditches and Drains.—Whoever shall obstruct, or cause to be obstructed, any ditch or drain on the side of any road, which has been, or may hereafter be constructed under the authority and at the expense of the State, or any ditch or drain, made as aforesaid, to drain the water from any part of the said roads, or any of them, by throwing into the said ditches or drains, any earth, logs, trees, bushes or other things whatsoever, and shall not immediately remove the same when required, shall be deemed guilty of a nuisance, and on conviction thereof, shall be fined in a sum not exceeding ten dollars, nor less than two dollars, and shall be further liable to the expense of removing the nuisance. (Rev. Stat., Sec 30, C. CXXIX, p. 720.)

FORMS.

Form No. 112 —Summons to Three Freeholders.

THE STATE OF SOUTH CAROLINA, }
County of ——. }

Whereas, information hath been this day made before me, A. B., Trial Justice in and for the said County and State, upon the oath of B. C., planter, that C. D., of the said County, having kept water during the Winter upon grounds on which rice is to be planted the present Spring, has neglected to open the drains (which kept up the water) in a sufficient manner for the letting off of the same, to the damage of the said B. C.

These are, therefore, To command you to summon E. F., G. H. and J. C., disinterested persons of the neighborhood and residents, to be and appear at ——, in the County aforesaid, on the —— day of —— instant, at —— o'clock — M., to view the obstructions complained of, and to

determine the matter in dispute between the said B. C. and C. D., and to return the same to me under their hands and oaths.

Hereof fail not at your peril.

Given under my hand and seal, at ——, this —— day of ———, 18—.

A. B, [L. S.]
Trial Justice.

FORM NO. 113.—NOTICE TO THE PERSON COMPLAINED OF.

To C. D.:

SIR—Information having been given me, on oath, by B. C., that you have neglected to open your dam on or before the tenth day of March instant, in conformity to the Statute in that case made and provided; and the said B. C. having applied for a warrant of survey on such dam or obstructions;

These are, therefore, To notify you that E. F., G. H. and J. C. are summoned to view the said obstructions, on the —— day of ———, at —— o'clock — M.

Given under my hand and seal, this —— day of ———, 18—.

A. B., [L. S.]
Trial Justice.

FORM NO. 114.—THE RETURN OF THE FREEHOLDERS.

We, E. F., G. H. and J. C., freeholders of ——— County, by virtue of a warrant under the hand of A. B., Trial Justice in and for the said County and State, dated the —— day of ———, in the year ———, went as directed by the said warrant, to (*here mention the place,*) in the said County, and there, (first being duly sworn,) having viewed the said dam or obstructions, belonging to the said C. D., and which is now complained of by B. C., we are of opinion that such dam or obstructions prevent B. C. from planting his crop of rice in proper time, and thereupon have caused the said dam to be immediately cut and opened.

Given under our hands, this —— day of ———, 18—.

[Signed) E. F.
G. H.
J. C.

FORM NO. 115.—EXECUTION TO LEVY THE COSTS OF SUIT.

THE STATE OE SOUTH CAROLINA,
COUNTY OF ———

By A. B., Trial Justice in and for the said County of the said State:

To any Lawful Constable:

These are to charge and command you, that of the goods and chattels of C. D., of the County aforesaid, you levy, or cause to be levied, in the sum of ———, lawful money of the State, for his costs, for a warrant of

survey, obtained by B. C., on the —— day of ——— last past, for the purpose of viewing the dam of him, the said C. D., which he, the said C. D., had neglected to open, agreeable to the directions of the Statute in that case made and provided, as appears by the return of E. F., G H. and J. C., freeholders, appointed for that purpose.

Given under my hand and seal, the —— day of ———, 18—.

A. B., [L. S.]
Trial Justice.

DEAD BODIES.

(*See Coroner.*)

Taking up Dead Bodies even for the Purposes of Dissection, is an Indictable Offense.—It has been holden, that it is an indictable offense to take up a dead body, even for the purposes of dissection. Upon an indictment for this offense, it was moved, in arrest of judgment, that if it were any crime, it was one of ecclesiastical cognizance only; that it was not made penal by any Statute; and that the silence of Stamford, Hale and Hawkins, upon this subject, afforded a very strong argument to show that there was no such offense cognizable in the Criminal Courts. But the Court said: "That common decency required that the practice should be put a stop to; that the offense was cognizable in a Court as being highly indecent, and *contra bonos mores;* at the bare idea alone of which nature revolted; that the purpose of taking up the body for dissection did not make it less an indictable offense; and that as it had been the regular practice of the Old Bailey in modern times, to try charges of this nature, many of which had induced punishment, the circumstance of no writ of error having been brought to reverse any of these judgments, was a strong proof of the universal opinion of the profession upon this subject; and they, therefore, refused even to grant a rule to show cause, lest that alone should convey to the public an idea that they entertained a doubt respecting the crime alleged."—1 Russ., 414.

Taking up to Sell.—It is an offense against decency to take a person's dead body with intent to sell or dispose of it for gain and profit. An indictment charged (*inter alia*) that the prisoner, a certain dead body of a person, unknown, lately before deceased, wilfully, unlawfully, and indecently, did take and carry away, with intent to sell and dispose of the same, for gain and profit; and it being evident that the prisoner had taken the body from some burial ground, though from what particular place was uncertain, he was found guilty upon this count. And it was considered that this was so clearly an indictable offense, that no case was reversed.—(*Ib.*)

Refusal or Neglect to Bury.—The refusal or neglect to bury dead bodies by those whose duty it is to perform the office, appears also to have been considered as a misdemeanor. Thus, Abney, J., in delivering the opinion of the Court of Common Pleas, said: "The burial of the dead is (*as I apprehend*) the duty of every parochial priest and minister; and if he neglect or refuse to perform the office, he may, by the express words of Canon LXXXVI, be suspended by the Ordinary for three months. And if any temporal inconvenience arise, as a nuisance, from the neglect of the interment of the dead corpses, he is punished also by the temporal Courts, by indictment or information.—(*Ib.*)

Burying Persons who Came to Violent Deaths.—There is one case in which too speedy interment of a dead body may be an indictable offense, namely, where it is the body of a person who has died a violent death In such case, by Holt, C. J., the Coroner need not go, *ex-officio*, to take the inquest, but ought to be sent for, and that when the body is fresh; and to bury the body before he is sent for, or without sending for him, is a misdemeanor. It is also laid down, that if a dead body in prison, or other place, whereupon an inquest ought to be taken, be interred, or suffered to lie so long that it putrefy before the Coroner has viewed it, the jailor or township shall be amerced.—(*Ib.*)

DEADLY WEAPONS.

Whoever shall make an assault upon another person with any deadly weapon, carried concealed about the person, every such person, upon conviction, under indictment, shall be find not less than two hundred and not more than two thousand dollars, and shall be imprisoned for a period not exceeding six months, at the discretion of the Court, and shall, moreover, be required by the Court to find sureties for the peace and for good behaviour for one year after the termination of such imprisonment.—(Gen. Stat., p. 710.)

DEER.

It shall not be lawful for any person in this State to kill any deer or worry them with dogs, or otherwise, with the intention of destroying them, between the first day of March and the first day of September in any year hereafter.—(15 Stat., 160; 17 Stat., 286.

Any person violating the above provision, shall, upon conviction thereof, be fined not less than twenty dollars, or be imprisoned not less than twenty days, which fine, if imposed, shall be recoverable before any Court of competent jurisdiction; one-half thereof shall go to the informer, and the other half to the school fund of the County.—(*Ib.*)

Any person in whose possession recently killed venison, or fresh deer skins, shall be found, between the dates above mentioned, shall be liable to the same penalty.—(*Ib.*)

If any servant, by command of his or her employer, shall so shoot or kill any deer as aforesaid, the party giving such command shall be liable to the like penalties respectively: *Provided, always,* That it shall and may be lawful for any freeholder or housekeeper, at any time, to kill, or cause to be killed, any kind of deer in his enclosed grounds without being liable to any penalty for so doing —(Gen. Stat., 402.)

Any person or persons who shall hunt or kill any deer in the night time, except in their own enclosed grounds, for every such offense shall forfeit and pay the sum of twenty dollars, to be applied and disposed of as above directed.—(*Ib.*)

The above provisions shall not extend or be construed to extend, to any person who shall kill, at any time, any deer for food, for the necessary subsistence of himself or family, so as such person do not sell or dispose of the skin of any deer so killed; and in case any person shall be prosecuted for killing deer within the time prohibited by this Chapter, and such person shall allege that he killed such deer for food for the necessary subsistence of himself or family, the burden of the proof shall be on the person so prosecuted.—(*Ibid.*)

DEFAULT OF ANSWER.

(*See Courts of Trial Justices.*)

DEFAMATION.

(*See Libel.*)

DEPOSITION.

Trial Justices may take, of old, infirm witnesses, absent on official duty, etc.

(*See Courts of Trial Justices.*)

DETAINING PERSONAL PROPERTY.

(*See Claim and Delivery of.*)

DISCOUNT OR SET OFF.

1st What Causes of Action may be offered on Discounts.
2d Against and by What Parties.

1st.—WHAT CAUSES OF ACTION MAY BE OFFERED ON DISCOUNTS.

Torts.—Torts and trespasses are not discountable under our discount law, only money transactions or mutual accounts (Gibbs vs. Mitchell, 2 Bay, 351.)

Amounts Above the Jurisdiction.—No discount can be set off, the amount of which exceeds the jurisdiction. Nor may the defendants withdraw a part of the discount in order to give jurisdiction.—(Wells ads. Reynolds, 1 Tr., 478.)

Notes and Open Accounts.—A note, not negotiable, may be set up on discount by a party to whom it is assigned.—(Farr ads. Hemmingway, 2 Tr., 753.) But an open account may not. (Brown *vs.* Thompson, 2 McC., 476.

Insolvent Debtor—In a suit by the assignees of an insolvent debtor, a person who owed the estate at the time of the assignment, cannot set up in discount of a debt afterwards acquired. (Assignees of Lowrie *vs* Hinds, 3 McC., 247.)

Debts Due.—A debt to be set off must be due and owing to the defendant at the time he was sued, and he will not be permitted to set up on discount, a demand acquired by him after suit brought. (Shepherd *vs.* Turner, 3 Mc., 249.)

2d.—AGAINST AND BY WHAT PARTIES.

Administrator.—An administrator may not be sued within nine months from the death of his intestate, yet if he sue, the defendant may, nevertheless, plead a discount.—(Cunningham *vs.* Baker, 3 N. and McC., 399.

In an action by an administrator, the defendant shall not be permitted to set off a demand which he acquired after the death of the intestate, as it might disturb the order of distribution directed by law in cases of intestates estates. (Schmidts, administrator, *vs.* Crafts, 2 Brevard, 266.)

Partner.—The private debt of one co-partner cannot be set off against a demand of partnership. (Powne & Dawson *vs.* Fletcher & Phillips, 2 Bay, 146.)

Agent.—When a defendant is sued for articles sold him by an agent, he may not set up in discount a debt due him by an agent, if he knew of the agency at the time he bought the articles, or if it came to his knowledge before the indebtedness of the agent to said defendant.—(Administrators of W. Conyers *vs.* John Magrath, 4 McCord, 392.)

DISFIGURING.

(*See Cattle, Malicious Mischief, Mayhem, &c.*)

DISORDERLY HOUSES.

All disorderly inns or ale houses, bawdy houses, gaming houses, play houses, unlicensed or improperly conducted, booths and stages for rope dancers, mountebanks, and the like are public nuisances, and may therefore be indicted. (1 Russ, on Cr., 298.)

1st.—Of Inns.
2nd.—Of Bawdy Houses.

1st.—OF INNS.

It seems to be agreed that the keeper of an Inn may, by the common law, be indicted and fined as being guilty of a public nuisance, if he usually harbor theives, or persons of such scandalous reputation, or suffer frequent disorders in his house, or take exorbitant prices, or set up a new Inn in a place where there is no manner of need for one, to the hinderance of other ancient or well grounded Inns, or keep it in a place in respect of its situation, wholly unfit for such purpose. And it seems also to be clear that if one who keeps a common Inn, refuse either to receive a traveller as a guest in his house, or to find victuals and lodging, upon his tendering him a reasonable price for the same, he is not only liable to render damages to the party in an action, but may also be indicted and fined at the suit of the King; and it is also said that he may be compelled by the constable of the town to receive and entertain such a person or guest, and that it is in no way material whether he have any sign before his door or not, if he make it his common business to entertain passengers. (1 Russ, on Cr., 298).

The keeping of an Inn is no franchise, but a lawful trade, when not exercised to the prejudice of the public; and therefore there is no need of any license or allowance for such erection.

But if an Inn use the trade of an ale house, as almost all inn-keepers do, it will be within the Statutes made concerning ale houses. (*Ib.*)

2nd.—OF BAWDY HOUSES.

It is clearly agreed that keeping a bawdy house is a common nuisance as it endangers the public peace, by drawing together dissolute and debauched persons; and also has an apparent tendency to corrupt the manners of both sexes by such an open profession of lewdness. And

it has been adjudged that this is an offense of which a *femme covert* may be guilty, as well as if she were sole, and that she, together with her husband, may be convicted of it; for the keeping of the house does not necessarily import property, but may signify that share of government which the wife has in a family, as well as the husband; and in this she is presumed to have a considerable part, as the matters are usually managed by the intrigues of her sex.

If a person be only a lodger, and have but a single room, yet if she make use of it to accommodate people in the way of a bawdy house, it will be keeping of a bawdy house, as much as if she had a whole house. But an indictment cannot be maintained against a person for being a common bawd, and procuring men and women, to meet together to commit fornication; the indictment should be for keeping a bawdy house. For the bare solicitation of chastity is not indictable, but cognizable only in ecclesiastical Courts. (*Ibd*)

(See also Bawd and Gaming.)

DISGUISE.

If any two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to injure, oppress or violate the person or property of any citizen, because of his political opinion of his expression or exercise of the same, or shall attempt, by any means, measure or acts, to hinder, prevent or obstruct any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States, or by the Constitution and laws of this State, such persons shall be deemed guilty of a felony, and, on conviction thereof, be fined not less than one hundred dollars or more than two thousand dollars, or be imprisoned not less than six months, nor more than three years, or both, at the discretion of the Courts; and shall thereafter be ineligible and disabled from holding any office of honor, trust or profit in this State. (Genl. Stat. C. CXXXII Sec, 1st., p. 730).

If in violating any of the above provisions, any other crime, misdemeanor or felony shall be committed, the offender or offenders shall, on conviction thereof, be subjected to such punishment for the same as is attached to such crime, misdemeanor and felony by the existing laws of the State. (*Ib.*, Sec. 2.)

(See also Escape.)

DISMISSAL.

(*See Appeal.*)

DISTRESS.

(*See Landlord and Tenant.*)

Definition.—Is the taking of a personal chattel out of the possession of a wrong doer, into the custody of the party injured, or of an officer of the law to procure a satisfaction of the wrong committed or the payment of a penalty, and it lies either for cattle trespassing, or for non-payment of rent, or for penalties under certain Statutes.

1st.—FOR WHAT CAUSES A DISTRESS SHALL BE.

Rent in Arrear.—Distress for rent must be, for rent in arrear: Therefore it may not be made on the same day on which the rent becomes due, for if the rent is paid in any part of that day, whilst a man can see to count money, the payment is good.

After Tender.—It must not be after tender of payment, for if the landlord comes to distrain the goods of his tenant for rent behind, before the distress, the tenant may upon the land, tender the arrearages. And if after that a distress be taken, it is wrongful; and if the landlord have distrained, if the tenant, before the impounding thereof, tender the arrearages, the landlord ought to deliver the distress, and if he doth not, the detainer is unlawful. Even so it is in case of a distress for damage *feasant*, (or damage done by cattle trespassing), the tender of amends before the distress, maketh the distress unlawful; and after the distress, and before the impounding, the detainer unlawful. (2 Inst, 107.)

But in this case, although the owner tender sufficient amends, yet he cannot take his beasts out of the pound, if the amends be refused; but he must replevy; and if it be found at the trial that the amends were not sufficient, the person on whom they trespassed shall have damages; if the amends tendered were sufficient, then the owner of the beasts shall have damages. (Dr. and St., 112.)

Parol lease.—On a parol, demise or verbal lease, where the quantum of the rent agreed upon can appear in certain, the landlord may distrain. But as there are often difficulties when the agreement is not by deed, the landlord in such case, may recover a reasonable satisfaction in an action on the case, for the use and occupation of the lands. And if on the trial, any parol, demise, or any agreement (not being by deed), whereon a certain rent was reserved, shall appear, the plaintiff shall not therefore, be non-suited, but may make use thereof as an evidence of the quantum of the damages to be recovered. (11 Geo., 2 C. 19, Sec. 14).

Although this Statute is not of force here, the same mode of proceeding would be allowed in our Courts.

Lease ended.—Persons having rent in arrear, upon any lease determined, may distrain for such arrears after the determination of the lease, in the same manner as if it had not been determined.

Provided, that such distress be made in six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrear became due. (8 An , C. 14, S. 6, 7).

Holding over.—All tenants, whether for life or years, by sufferance or at will, or person coming in under or by collusion with them, who shall hold over after the legal determination of their estates, after demand made in writing for delivering possession thereof, by the person having the reversion or remainder therein or his agent, such tenant or other person, holding over the space of six months after such demand, shall forfeit double the value of the use of the premises, recoverable by action of debt or other legal action, or by distress, as in cases of rent reserved and payable quarter yearly. (A. A , 1808.)

Notice to quit.—In case any tenant shall give notice in writing of his intention to quit the premises, and shall not accordingly deliver up the possession, at the time in such notice contained, the said tenant, his executors or administrators, shall pay to the landlord double the rent which he would otherwise have been liable to pay, which shall be recovered in manner aforesaid, *provided, nevertheless*, that nothing herein contained shall be construed to give such tenant a right to discontinue or determine his tenancy by such notice, in any other manner than according to the laws heretofore existing. (*Ib.*)

Second Distress.—And where a distress is made by virtue of a warrant of a Trial Justice, in nature of an execution, the distress may be renewed, if insufficient at first , for a man may mistake the value of the goods seized, or their value may be uncertain, or imaginary, or the person making the distress may barely take what he thinks enough, through tenderness and moderation ; and it is better for the owner that he should have the liberty of seizing again, for if he is to be precluded from making up the deficiency, he will cetainly take care not seize too little at first. (Bur. 589.)

2D.—WHAT GOODS MAY BE DISTRAINED AND WHAT NOT.

Distress for rent must be of a thing whereof a valuable property is in somebody, and therefore dogs, bucks, conies and the like, that are *ferae naturae*, can not be distrained. (1 Inst., 47.)

Property in Use.—Although it be of valuable property, as a horse, yet, when a man or woman is riding on him, or an axe in a man's hand, cutting of wood, and the like, they are, for that time, privileged, and can not be distrained. (I Inst., 47.)

But it is said that if one be riding upon a horse, *damage feasant*, the horse may be led to the pound with the rider upon him. (1 Sid., 440, 442.)

And it has been he'd, that horses joined to a cart, with a man upon it, cannot be distrained for rent, (*although they may for damage feasant.*) but both cart and horses may, if the man be not upon the cart. (1 Vent., 36.)

In the Way of Trade.—Valuable things shall not be distrained for rent, for benefit of trades, and which are there by authority of law; as a horse in a smith's shop, shall not be distrained for the rent of the shop, nor a horse in a holstery, nor the materials in a wearer's shop for making of cloth nor cloth or garments in a tailor's shop, nor sacks of corn or meal in a mill, nor anything distrained for *damage feasant*, for it is in the custody of the law, and the like. (1 Inst., 47.)

Furnaces, Money, &c—Furnaces, cauldrons, or other things fixed to the freehold, or the doors, or windows of a house, or the like, cannot be distrained. (1 Inst., 47.)

Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained. (2 Bac. Abr., 109).

But money in a bag sealed, may be distrained, for that the bag sealed may be known again.

By the 2 W. Ses., 1 c., 5, persons having rent arrear, on any demise, lease, or contract, may seize and secure any shares, or cocks of corn, or corn loose in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land charged with rent, and may lock up and deliver the same in the place where found, in the nature of a distress, so as the same be not removed to the damage of the owner, out of the place where found and seized, but be kept there (*as impounded*,) till replieved or sold. (S. 3.)

Goods on the Premises.—Generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenantor stranger, are distrainable by him for rent, for otherwise, a door would be opened for infinite frauds upon the landlord, and the stranger hath his remedy over by action on the case, against the tenant, if by the tenant's default the goods are distrained, so that he can not render them, when called upon. (3 Black, c. 1, p, 8.)

But in particular circumstances perhaps a Court of Equity may relieve, as in the case of Fowkes and Joyce.—(T. 1, W.)

Sheep in Pasture.—In the Common Pleas, a person driving sheep to London to sell, by agreement with a master of an inn, put them into ground at so much a score for a night; the landlord seeing them, asked whose they were, but consented to their staying there, and afterwards distrained them for rent due to him from the master of the inn and it was adjudged for the landlord.—(3 Lev., 260; 2 Ventr., 50.)

But in the same case, upon a bill of relief in equity, the lord's commissioners seemed to think that grounds lying to the inn and used therewith, ought to have the same privilege as the inn hath, and that passengers' cattle ought not to be distrained there.—(2 Vern., 129.)

And it appeared in this case, that on the landlord's coming and seeing the sheep, he pretended to be angry, upon which the owner offered to take out the sheep, at which time they were not distrainable for the rent, having not been *levant* and *couchant*. (*That is having not so long remained upon the ground as to have laid down and risen up again to feed.*)

So that the Court looked on the consent as a fraud, to get them to be left all night, by which they became liable to the distress, and it was decreed that the landlord should answer for the value of the sheep, and pay cost, both in law and equity.—(Prac. Chan., 7.)

Goods at Vendue.—Another exception has been made likewise by the Courts in this State also. August, 1790, Himeli replieved some goods which he had sent to Cohen, a vendue master, to dispose of for him at public auction, and which had been seized for house rent by Wiatt & Richardson; the Court resolved that goods lodged with such an intent in a vendue master's store were not liable to distress for rent.

Cattle Trespassing.—Where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been *levant* and *couchant*, provided they are tresspassers; but if the tenant of the land is in default, in not repairing his fences, whereby the beasts came into the land, the landlord can not distrain such beasts, though they have been *levant* and *couchant*, unless he has caused notice to be given to the owner, and the owner suffers them to remain there afterwards.—(Lutw., 364.)

In case of rent reserved upon a lease for years, the landlord cannot distrain such cattle until they be *levant* and *couchant*, for if the landlord had had the lands in his own hands, he ought to have repaired the fences; and when he puts in a lessee, he ought, by covenant, to oblige him to repair; and therefore, in that case, if the law would allow the landlord to distrain the cattle of a stranger which come in by escape, before that they be *levant* and *couchant*, it would be, in effect, to allow a man to take advantage of his own wrong. Therefore, if the cattle come in by default of the owner of the cattle, then they may be distrained before they be *levant* and *couchant;* and if in default of the tenant of the land, then they cannot be distrained, until they have been *levant couchant;* that is to say, for rent upon leases for years. And in such case the landlord shall not take the cattle before he has given notice to the owner that they are upon the land liable to his distress; and if he does not come to take them away, then they become distrainable. And by Treby, C. J, when the cattle escape accidentally, they are not distrainable until they have been *levant* and *couchant;* but if they escape by default of their owner, they are distrainable the first minute.—(*Ib.*)

Articles Exempt.—The Act of 1823, exempting certain articles of debtors from levy and sale (*for which see execution*), includes as well levies and sales under distress warrants for rent as under executions—(Caulfield *vs.* McAlliston, 4 McC., 378.)

3d.—AT WHAT TIME THE DISTRESS SHALL BE TAKEN.

Not in the Night.—For rent, the landlord cannot distrain in the night, but in the day time; but for damage *feasant*, one may distrain in the night; otherwise, it may be the beasts will be gone before he can take them.—(1 Inst., 142.)

If Beasts Escape.—If a man come to distrain, and see the beasts in his soil, and the owner chase them out, of purpose, before the distress taken, yet the owner of the soil cannot distrain them; if he doth, the owner of the cattle may rescue them, for the beasts must be damage *feasant* at the time of the distress.—(1 Inst., 161.)

Before sun rising or after sun set, no man may distrain, but for damage feasant.—(Mirrour, C. 2, Sec. 26.)

Goods Removed.—And if any tenant for life, years, at will, sufferance or otherwise, shall fraudulently or clandestinely convey off the premises his goods or chattels, to prevent a distress, the landlord, or any person lawfully empowered by him, may, in five days next after such conveying away, seize the same wherever they may be found, and dispose of them in such manner as if they had been distrained on the premises. (Sec. 2.)

4TH.—THAT REASONABLE DISTRESS SHALL BE TAKEN.

Distress shall be reasonable, and not too great; and he that taketh great and unreasonable distress, shall be grievously amerced.—(52 H 3, C. 4.)

For example, if the lord distrain two or three oxen for 12d., or the like small sum, and the owner bring a replevy of the oxen, and the lord avow the taking of them for 12d. of his own showing, he shall make fine, or the party may have his action upon this Statute.—(2 Inst., 107.)

If the lord distrain an oxen or a horse for a penny, if there were no other distress upon the land holden, the distress is not excessive; but if there were a sheep, or a swine, or the like, then the taking of the ox or horse is excessive, because he might have taken a beast of less value. (2 Inst., 107.)

The remedy for excessive distresses is by a special action on the Statute of Marlbridge; for an action of trespass is not maintainable upon this account, it being no injury at the common law.—(3 Black. Com., 12.)

5TH.—MANNER OF MAKING DISTRESS.

Not to Break Doors or Gates.—Gates or enclosures may not be broken open, nor thrown down to make a distress.—(1 Inst., 161.)

Nor may the lessor enter into the tenant's house, unless the doors are open.—(Read, Distr., 3 Bac. Abr., 111.)

Upon a question about taking a distress, it was held by the Lord Chief Justice Hardwicke, at the Summer Assizes at Exeter, 1735, that a padlock put on a barn door could not be opened by force to take the corn by way of distress. (Vin Distr., E. 2, 6).

But if the outer door of an house is open, one may break an inner door, to take a distress. (Cases in the time of Lord Hardwicke, 168.)

If a landlord comes into a house, and seizes upon some goods, as a distress, in the name of all the goods of the house, that will be a good seizure of all. (6 Mod., 215).

6TH.—DISTRESS HOW TO BE DEMEANED.

Not taken out of the County.—By the 52 H. 3, C. 4; none shall cause any distress that he hath not taken, to be driven out of the County where it was taken; and if one neighbor do so to another, of his own authority, (as for damage *feasant*, or rent charge,) (2 Inst., 106,) he shall make fine as for a thing done against the peace; and if the lord so presume, to do against the tenant, he shall be grievously punished by amerciament.

Before this act, at the common law a man might have driven the distress to what County he pleased, which was mischievous, for two causes: 1st. Because the tenant was bound to give the beasts, being impounded in open pound sustenance, and being carried into another County, by common intendment, he could have no knowledge where they were: 2nd. He could not know where to have a replevy, but the party was, before this Statute driven to his action upon his case. (2 Inst., 106).

Nor used.—Cattle distrained may not be worked or used, unless for the owner's benefit, as a cow milked or the like; much less may they be abused or hurt (Cro. Jac., 148.)

7TH.—OF RESCOUS AND POUND BREACH.

At common law.—By the common law, if a man break the pound, or the lock of it, or any part of it, he greatly offendeth against the peace, and doth trespass to the State, and to the Sheriffs in breach of the peace, and to the party, and to the delaying of justice; and therefore hue and cry is to be levied against him as against those who break the peace. (Mir., C. 2, S. 26.)

And the party who distrained, may take the goods again, wheresoever he shall find them, and impound them again. (1 Inst, 47.)

By Statute—And by Statute, on any pound breach or rescous of goods distrained for rent, the person grieved thereby shall, in a special action upon the case, recover treble damages and costs against the offender or against the owner of the goods, if they be afterwards found to have come to his use or possession. (2 W., C. 5, S. 4.)

In the case of Sir Wilfred Lawson *vs* Story, M., 6 W., it was adjudged that the costs shall be trebled as well as damages. (L. Raym, 20).

When a man hath taken distress and the cattle distrained, as he is driving them to the pound, go into the house of the owner; if he that took the distress demand them of the owner, and he deliver them not, this is the rescous in law. (1 Inst, 161.)

8TH.—REPLEVYING THE DISTRESS.

Writs returnable at once.—All writs of replevin shall be returnable immediately, and it shall be the duty of the respective sheriffs in whose offices they shall be lodged, to make return thereof accordingly. (A. A., 1808.)

Declaration.—The plaintiff or plaintiffs in all actions of replevin, shall be bound to declare, within one month from the lodgement of the writ in the sheriff's office, without any rule or motion for that purpose, and on failure of the sheriff to make return thereof, within the period aforesaid, the plaintiff or plaintiffs is or are hereby authorized to substitute the same as in cases of loss; and in case the plaintiff or plaintiffs shall not declare within the period aforesaid, the defendant or defendants shall be at liberty to enter up judgment of *non pross.*, and proceed as in such case as is provided by law. (*Ib.*)

Bond.—And the sheriff or other officer having the power to grant replevins, shall, in every replevin of a distress for rent, take, in his own name, from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods destrained, in case a return shall be awarded before any deliverance be made of the distress; and the sheriff shall assign such bond to the avowant or person making conusance. (11 G. 2, C. 19, S. 23.)

Liability of Surety.—In all cases of replevin, the security of the plaintiff shall be bound and obliged, not only for the return of the goods distrained, but also in case the said goods shall be insufficient to satisfy the rent for which the distress is made, or, in case the same shall be eloigned for the full amount of the rent for which the distress shall be made, and all costs of suit which may be adjudged against the plaintiff in the action; and it shall be the duty of the sheriff executing the writ of replevin, to take bond and security according to law, for such amount as shall be sufficient to cover all such sums. (A. A., 1808.)

9th.—SALE OF THE DISTRESS.

In Five Days—Where any goods shall be distrained for rent, upon liens or contract, and the tenant or owner of the goods distrained, shall not, within five days after such distress taken, and notice thereof, (*with the cause of such taking,*) left at the chief mansion house, or other most notorious place on the premises, replevy the same. In such case, the person distraining shall, with the constable of the Parish, or place where such distress shall be taken, cause the goods or chattels so distrained, to be appraised by two appraisers, sworn to appraise the same truly, according to the best of their understanding; and, after such appraisement, shall sell the same for the best price can be gotten for them, for satisfaction of the rent, and charges of the distress, leaving the overplus, if any, with the constable for the owner's use. (2 W. Sess., 1 c. 5.)

10th.—CASE OF TENANT HOLDING OVER.

By the 8 Ann., c. 14, whereas tenants *pour autre vie* (that is, holding during the life of another person,) and lessees for years, or at will, fre-

quently hold over after the determination of the lease; and whereas, after the determination of such or other leases, no distress can be made for arrears of rent that grew due on such leases, before the determination thereof, it is therefore enacted that it shall be lawful to distrain after the determination of such lease, in the same manner as if it had not been determined; *provided*, the distress be made within six calendar months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom such arrears became due. (S. 6, 7.)

A lease at will, is understood to be for a year certain, and if a tenant takes from year to year, either party must give reasonable notice before the end of the year, which reasonable notice varies according to the custom of different countries. (Burr. Reports, 1609)

11TH.—RENT IN CASE OF AN EXECUTION.

Goods Not to be Taken until Rent Paid.—By the 8 Ann., c. 14, no goods being on any messuage lands or tenements, leased for life, term of years, at will or otherwise, shall be liable to be taken by execution, unless the party at whose suit the execution is sued out, shall, before the removal of such goods from off the premises, pay to the landlord, or his bailiff, all such rent as shall be then due for the premises; *provided*, that it amount to not more than one year's rent, then the party paying such landlord one year's rent, may proceed to execute his judgment. (S. 1.)

And in case of two executions, there shall not be two year's rent paid to the landlord; for the intent of the Act was to reserve to the landlord only the rent for one year, and it was his own fault if he let more run in arrear; therefore, one year's rent to the landlord being paid to him on the first execution the Sheriff is not to levy for him again anything on a subsequent execution. (Str. 1024.)

If a landlord does not distrain himself in person, he should empower a Constable to levy, by distress, as follows:

FORM No 116

Know all Men by these Presents: That I, A. B., do hereby authorize and appoint B. C., to take any person or persons to his assistance, and enter into the house (*or plantation*) of C. D., and there to make distress of all such goods and chattels as are upon the premises, for —— dollars, for one quarter's rent, (*or one year's rent, as the case is,*) due to me, on ——, and after the said goods are so distrained, if the said C. D., doth not, within the time limited in the Statute for that purpose made, replevy the same, or pay the said rent, then and in such case, I do hereby authorize you to cause the said goods to be appraised, sold, and applied, as by the said Act is directed, and for your so doing, this shall be your warrant.

Witness my hand and seal, this —— day of ——, in the year ——.

A. B., [L. S.]

When the goods distrained by virtue of the above power, the Constable or Attorney employed, should immediately order them to be locked up in one of the rooms of the house, or removed off the premises, as shall be thought most safe, first taking an inventory, which must be entitled in this manner:

FORM No. 117.

Inventory.—An inventory of the several goods that were seized and distrained by me, whose name is underwritten, in the house (*or plantation,*) of ———, in —— street, in Charleston, (*or any other place,*) by an authority of ———, to me for that purpose given, for — dollars, for one quarter's (*or one year's*) rent, due on the —— day of ——, which goods were seized the —— day of ——, inst., for the use of the said ———.

Imprimis, in the cellar, &c.
In the lower rooms, &c.
In the upper rooms, &c.
In the kitchen, &c.

This inventory must be signed by the appraisers, and by the Constable or other person employed.

——— } Sworn Appraisers.
———
——— } Constable.

Together with the copy of the above inventory, the tenant must receive the following notice:

FORM.

No. 118 —Notice.

A. T:

Take notice, that by the authority, and on behalf of your landlord, A. L., I have this —— day of ——, in the year ——, distrained the several goods and chattels specified in the schedule annexed, in your houses, out-houses and grounds, at ——, for —— dollars arrear of rent due to him, the said A. L.; and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said goods and chattels, I shall, after the expiration of five days from the date hereof, cause the said goods and chattels to be appraised and sold, according to the Statute in that case made and provided.

Given under my hand, the day and year first above written.

A. D.

Witness, that a copy hereof was this day delivered to the said A. T., (or left at the chief mansion house of the said A T.)

A. W.

APPRAISER'S OATH.

You, and each of you, shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding: So help you God.

FORM OF THE APPRAISEMENT.

The appraisement may be in the form of the inventory, specifying the particulars and their respective valuations, and then add at the end: Appraised by us, this —— day of ——, in the year ——.

A. P.,
B. P., } *Sworn Appraisers.*

N. B.—The person distraining must take care to keep a copy of the inventory, appraisment and notice.

Landlord's should always take care to get the tenant to acknowledge the terms of his tenure, in presence of witnesses, or else reduce the terms into writing.

DOCKET.

(See Courts of Trial Justices—Docketing Judgments.)

DOGS.

Not Subject of Larceny.—A dog is said at common law to have no intrinsic value, and he cannot therefore be the subject of larceny. (4 Bl. Com , 236; 8 Serg. & Rawls, 571.)

Trespass May be Committed of.—But the owner has such property in him, that he may maintain trespass for an injury to his dog; "for a man may have property in some things which are of so base nature that no felony can be committed of them, as of a blood-hound or mastiff." (2 Bl. Com., 397; Bro. Trespass, p. 407; Hob., 283.)

Going at Large.—A mastiff going into the street unmuzzled, from the ferocity of his nature, being dangerous and a cause of terror to the citizens of the State, seemeth to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large. Lord Raym. 110.)

Killing Sheep.—The owner of any dog, or person having in his care or keeping any dog, shall be liable to pay to the party injured, double the value of all sheep that may be killed or injured by such dog, to be recovered by action at the suit of the party injured, in any Court having competent jurisdiction. (Gen. Stat., C. CXXI, Sec. 15, p. 561.)

If any person find any dog in the act of worrying or destroying any sheep in this State, it shall be lawful for said person to kill said dog, and he shall not be held to answer in any action, either civil or criminal. (16 Stat., 563.)

In all actions brought for the recovery of damages, under the preceding provision, the recovery of two dollars shall in all cases carry full costs. (*Ibid*, Sec. 16.)

At common law, (in order to maintain an action,) for biting by the defendant's dog, it must be proved, also, that he knew his dog to be used to bite; but one instance is sufficient in that case. (12 Mod., 555.)

And if a man keeps a dog accustomed to bite sheep, and he knows it, and notwithstanding he keeps the dog still, and afterwards the dog bites an horse, this shall be actionable, although he had been known before to bite sheep only; because the owner, after notice of the first mischief, ought to have destroyed or hindered him from doing any more hurt. (Lord Raym., 110.)

DRUNKENNESS.

HOW FAR AN EXCUSE FOR CRIME.

With respect to a person *non compos mentis* from drunkenness, a species of madness which has been termed *dementia affectata*, it is a settled rule, that if the drunkenness be voluntary, it cannot excuse a man from the commission of any crime, but, on the contrary, must be considered an aggravation of whatever he does amiss. Yet if a person, by the unskilfulness of his physician, or by the contrivance of his enemies, eat or drink such a thing as causes frenzy, this puts him in the same condition with any other frenzy, and equally excuses him; and, also, if by one or more of such practices, an habitual or fixed frenzy be caused, though this madness was contracted by the vice and will of the party, yet the habitual and fixed frenzy caused thereby, puts the man in the same condition as if it were caused at first involuntarily. And, though voluntary drunkenness cannot excuse from the commission of crime, yet where, as upon a charge of murder, the material question is, whether an act was premeditated, or done only with sudden heat and impulse, the fact of the party being intoxicated, has been holden to be a circumstance proper to be taken into consideration. (1 Russell on Crimes, p. 8.)

DUELLING.

Definition.—Is the fighting between two persons by agreement, upon some quarrel precedent. (I. Tomlins, 589.)

1st.—Of the Offense at Common Law.
2d.—Of the Statutory Offense.

1st.—OF THE OFFENSE OF COMMON LAW.

When Killing by, Murder.—If either party in a duel be killed, the other principal and seconds are guilty of murder, and this, whether the seconds fight or not (H. P., C. 47, 51.)

If two persons quarrel over night, and appoint to fight the next day, or quarrel in the morning, and agree to fight in the afternoon, or such a considerable time after by which it may be presumed the blood was cooled and they meet and fight a duel, and one kill the other, it is murder. (3 Inst, 52; Hale J. C., 48; Kel., 66.)

And whenever it appears that he who kills another in a duel, or fighting on a sudden quarrel, was master of his temper at the time, he is guilty of murder; as if after the quarrel, he falls into another discourse and talk calmly thereon, or allege that the place where the quarrel happens, is not convenient for fighting; or that his shoes are too high if he should fight at present, &c. (Kel., 56; Liv., 180.)

Where Challenge is not accepted.—If one *challenge* another, who refuses to meet him, but tells him that he shall go the next day, to such a place about business, and then the challenger meets him on the road and assaults the other; if the other in this case kill him, it will be only manslaughter; for there is no acceptance of the challenge, or agreement to fight; and if the person challenged refuseth to meet the challenger, but tells him that he wears a sword, and is always ready to defend himself, if then the challenger attack him and is killed by the other, it is neither murder or manslaughter, if necessary in his own defense. (Kel. 56.)

Makes Charges against character.—If one kill another in a deliberate duel, under provocation of charges against his character and conduct, however grevous, it is murder in him and his seconds; and therefore the bare incitement to fight, though under such provocation, is in itself a very high misdemeanor, though no consequence issue thereon against the peace. (3 Easts' Rep., 581.)

An endeavor to provoke another to commit the misdemeanor of sending a challenge to fight is in itself an indictable misdemeanor, particularly when such provocation is given in writing, containing libellous matter, and alleged to have been done with intent to do the party bodily harm, and to break the King's peace; the sending such act being an act done

towards procuring the commission of the misdemeanor, meant to be accomplished. (6 East's Rept., 464.)

2ND.—OF THE STATUTORY OFFENSE.

Whoever shall challenge another to fight at sword, pistol, rapier, or any other deadly weapon, or who shall accept any such challenge, shall, for every such offense, on conviction thereof, be deprived of the right of suffrage, and be disabled from holding any office of profit or honor, in this state, and shall be imprisoned in the Penitentiary for a term not exceeding two years, at the discretion of the Court. And in case any person shall kill another in any duel with a deadly weapon, or shall inflict a wound or wounds upon any person in any duel, so as the person or persons so wounded shall thereof die within the space of six months then next following, that such person so killing another, or so wounding any person or persons, whereby such person or persons so wounded shall die as aforesaid, being thereof convicted, shall suffer death as in case of wilful murder. (Gen. Stat., Sec. 7, 710; 17 Stat Sec. 1, p. 501).

Whosoever shall knowingly or willingly carry or deliver any such challenge in writing, or verbally deliver any message intended as, or purporting to be, such challenge, or who shall be present at the fighting of any duel as a second, or aid or give countenance thereto shall, for every such offense, or conviction thereof, be forever disabled from holding any office of honor or profit in this State, and shall be imprisoned in the Penitentiary for a term not exceeding two years, at the discretion of the Court, and shall be fined in a sum of not less than five hundred or more than one thousand dollars. Gen. Stat., Sec. 8, 710; 17 Stat., Sec. 2, 502.

Upon the trial of all indictments for duelling, any person in anywise concerned therein, shall and may be compelled to give evidence against the person or persons actually indicted, without criminating or subjecting himself to any prosecution, penalty, forfeiture or punishment on account of his agency in such duel. (Genl. Stat., Sec. 9, 710.)

If two are concerned, one may be used as evidence.—In every case where two or more persons shall be charged in any indictment for fighting a duel, or being concerned therein, either of such persons may be used as a witness or witnesses on behalf of the State, by having his or their names stricken out of the indictment, or otherwise, at the discretion of the Attorney General or Solicitor, or other Attorney acting for the State, conducting such prosecution, of which an entry shall immediately be made on the minutes of the Court; and in case of any such person or persons so used as a witness or witnesses in behalf of the State, in any prosecution for fighting a duel, or for being concerned therein, shall afterwards be indicted for the same offense, the fact of his or their being used as a witness or witnesses on a former prosecution for the same offense, shall and may be pleaded in bar to such subsequent indictment,

and, on proof thereof, by competent evidence, such person or persons shall be thereof acquitted and discharged. (*Ib.*, Sec. 10).

If it be brought to the notice of a Trial Justice, that two persons are suspected of being about to fight a duel, and good reason be shown for such suspicion, he should forthwith cause such persons to be arrested, and require them to give bonds for the peace.

If either party be killed in a duel, the punishment of the other principal and second, on conviction being death, a Trial Justice, therefore, has no power to admit them to bail. Otherwise, than where a homecide is committed, he may admit to bail as in other misdemeanors, of that grade according to the scale regulating recognizances. (See Recognizance.)

FORMS.

Form No. 119.—Arrest Warrant.

THE STATE OF SOUTH CAROLINA, }
County of———. }

By A. B , Trial Justice in and for the said County in the said State.

To any Lawful Constable:

Whereas, Complaint upon oath has been made unto me by C. D., that (*the names of the principals.*)

(*State here the acts done by them*), and that (*the names of the others concerned therein*) were engaged therein, (*as seconds*), or (*by causing a challenge*), or as (*aiders and abettors.*)

These are, therefore, to command you to apprehend the said defendants (*naming them*), and bring them before me to be dealt with according to law.

Given under my hand and seal at—— the —— day of ——— 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA, }
County of———. }

Personally appeared before, A. B., a Trial Justice of the said State, C. D., who being duly sworn, says: that (*here state the names of the principals and the acts done by them*) and that (*names of others concerned,*) were engaged therein, (*state how, whether as seconds, by causing a challenge, or as counsellors and abettors.*)

Sworn to &c., C. D.

A. B.
Trial Justice.

RECOGNIZANCE.

As in the usual Form.—(See Recognizance.)

FORM NO. 120.—RECOGNIZANCE TO KEEP THE PEACE WHERE PARTIES ARE SUSPECTED OF BEING ABOUT TO FIGHT.

(*Penal Clause, as in the usual Form.*)

Condition.—The condition of this recognizance is such, that if the above bound E. F. do keep the peace of the State, and be of good behavior towards all the citizens thereof, and especially towards C. D., and particularly if he shall not fight a duel, or shall not send, or give, or accept a challenge to fight a duel, within his State, or shall not cause any such challenge to be given, sent, or accepted, within this State, or within the limits of the United States, for one year and a day, then the above recognizance shall be null and void, or else to remain in full force and virtue.

E. F. [L.S.]
G. H. [L.S.]
J. J. [L.S.]

Taken and acknowledged the day and year above written, before me.
A. B., *Trial Justice.*

DURESS.

Definition.—2d Burns J., p. 57: Duress is where a person is kept in prison, or restrained of his liberty, contrary to the order of law, or threatened to be killed, maimed, or beaten; and if such person, so in prison, or in fear of such threats, make any specialty or obligation by reason of such imprisonment or threats, such deed is void in law; and in any action brought upon such specialty, the party may plead that it was made by duress, and so avoid the action.—(Cowel.)

Effect on Contract.—Every legal contract must be the act of the understanding, which they are incapable of using, who are under restraint and terrors; and, therefore, the law requires the free assent of the parties, as essential to every contract, and that they are not under any force or violence.—(2 Bac. Abr., 155.)

It seems clearly agreed, that where a person is illegally restrained of his liberty, by being confined in a common jail or elsewhere, and during such restraint, enters into a bond or other security to the person who causes the restraint, that he may avoid the same for duress of imprisonment.—(Co. Litt., 253; Jenk., 166.)

Lord Coke says, that for menaces, a man may avoid his own act in four instances: for fear of loss of life, loss of member, of mayhem, or imprisonment.—(1 Inst., 488.)

DWELLING HOUSES.

(See Arson, Burglary and House Breaking.)

What is at Common Law.—At common law, in cases of burglary, under the term dwelling house are included the out-houses within the curtilage or common fence with the dwelling house.—(3 Inst., 64; 4 Bl. Com., 225.)

By Statute.—By Gen. Stat., Sec. 32, p. 720, any house, out-house, apartment, building, erection, shed or box, in which there sleeps a proprietor, tenant, watchman, clerk, laborer, or person who lodges there, with a view to the protection of property, shall be deemed a dwelling house; and of such dwelling house, or of any other dwelling house, all houses, out-houses, buildings, sheds and erections which are within two hundred yards of it, and are appurtenant to it, or to the same establishment of which it is an appurtenance, shall be deemed parcels.—(Gen. Stat., 720.)

EJECTMENT.

(See Lands and Tenements.)

ELECTIONS.

1st. Of the Qualifications of Electors.
2d. Of the Commissioners and Managers of Elections.
3d. Of Offenses against the Freedom of Elections.

Bd of Registration

1st.—OF QUALIFICATIONS OF ELECTORS.

Every male citizen of the United States, of the age of twenty-one years and upwards, not laboring under the disabilities named in the Constitution, without distinction of race or color, or previous condition, who shall have been a resident of the State for one year, and in the county in which he offers to vote for sixty days next preceding any general election, shall be entitled to vote. *Provided*, That no person while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, shall be allowed to vote.—(Gen. Stat., c. VII., Sec. 1, p. 27.)

To vote in a municipal election, in addition to the above qualifications, he should have been a resident for the last sixty days within the corporate limits of the city, town or village *(as the case may be)* in which he offers to vote.

20.—OF THE COMMISSIONERS AND MANAGERS OF ELECTIONS.

Commissioners of Election are approved by the Governor at least ~~sixty~~ 30 days before such election, three for each county, whose duty it is to appoint three Managers of Election for each election precinct of the county for which they shall respectively be appointed. The said Commissioners of Election and such Managers of Election shall take and subscribe before any officer authorized to administer oaths, the following oath :

Oath.—" I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of the United States and of this State, to exercise the duties of the office to which I have been appointed, and that I will faithfully discharge to the best of my abilities, the duties thereof; that I recognize the supremacy of the Constitution and laws of the United States over the Constitution and laws of any State, and that I will support, protect and defend the Constitution of the United States, and Constitution of South Carolina, as ratified by the people on the 16th day of April, 1868, so help me God." And the same shall be immediately filed, in each instance, in the office of the Clerk of the County in which said Commissioners and Managers shall be appointed; and if there be no such Clerk, duly qualified by law, then in the office of the Secretary of State.—(Rev. Stat. c. VIII., Sec. 2d, p. 29.)

May Appoint a Clerk.—The Managers are authorized to appoint a clerk to assist them in whatever duties may be required of them, who shall take the above oath before the Chairman of the Board of Managers.—(*Ibid*, Sec. 3d.)

To Organize.—The Commisssoners aforesaid and the Managers aforesaid, at their first meetings, respectively, shall proceed to organize themselves in a Board by appointing one of their number Chairman of the Board, and such Chairman, in each instance, shall be empowered to administer the necessary oaths. (*Ib.*, Sec. 4th.)

Polls to be kept open from six o'clock in the Morning to six o'clock in the Evening.—The polls should be open at such voting places as shall be designated, at six o'clock in the forenoon, and close at six o'clock in the afternoon of the day of the election, and shall be kept open during these hours, without intermission or adjournment.

Oath to voters.—And the managers shall administer to each person offering to vote, an oath that he is qualified to vote at this election, according to the Constitution of the State, and that he has not voted during this election. (*Ibid*, Sec. 5.)

Representatives in Congress to be chosen.—Representatives in the House of Representatives of the Congress of the United States, shall be chosen at such election, in the several Congressional Districts by the qualified electors therein.

One general ticket.—And there shall be one general ticket, on which shall be the names of the persons voted for as Representatives in Congress, and State, Circuit and County officers (*Ibid*, Sec. 6 and 10.)

The ballots.—The voting shall be by ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be chosen, and shall be so folded as to conceal the contents; and such ballot shall be deposited in a box to be constructed, kept and disposed of as hereinafter provided. (*Ib.*, Sec. 9.)

One box for each election precinct to be provided—how made.—The Commissioners of Election shall provide one box for each election precinct An opening shall be made in the lid of the box, not larger than shall be sufficient for a single ballot to be inserted therein at one time;

Person voting must deposit his own ballot.—Through which each ballot received, proper to be placed in such box, shall be inserted by the person voting, and no other.

Each box shall be provided with a sufficient lock, and such box shall be publicly opened and inspected, to see that it is empty and secure, and then locked just before the opening of the poll, and the keys returned to the Managers, and shall not be opened during the election Each box for such precinct shall be labelled as follows: "Congress," "State," "Circuit" and "County Officers." (15 Stat., 171.)

Clerk to keep poll list.—Each clerk of the poll shall keep a poll list which shall contain one column headed, "Names of voters," and the name of each elector voting shall be entered by the clerk in such column. (Gen. Stat., C. VIII. Sec. 12)

Manner of counting votes—At the close of the election, the manager and clerk shall immediately proceed, publicly, to open the ballot box and count the ballots therein, and continue such count, without adjournment or interruption, until the same is completed, and make such statement of the result thereof, and sign the same, as the nature of the election shall require. If on counting, two or more like ballots shall be folded together compactly, only one shall be counted, and the others destroyed; but, if they bear different names, the same shall be destroyed and not counted. If more ballots shall be found, on opening the box, than there are names on the poll list, all the ballots shall be returned to the box and thoroughly mixed together, and one of the managers or the clerk, shall without seeing the ballots, draw therefrom, and immediately destroy as many ballots as there are in excess of the number of names on the poll list.

Managers to deliver box, poll list, &c., to Commissioners.—Within three days thereafter, the Chairman of the Board of Managers, or one of them, to be designated in writing by the Board, shall deliver to the Commissioner of Election the poll list, the boxes containing the ballots, and a written statement of the result of the election in his precinct. (15 Stat., 170)

Commissioners to form County Board of Canvassers.—The Commissioners of Election shall meet at the County seat, and shall proceed to organize and shall form the County Board of Canvassers. (Gen. Stat., C. VIII, Sec. 14, p. 31.)

To meet, appoint Secretary and qualify.—They shall meet at some convenient place at the County seat on the Thursday next following the election, before one o'clock in the afternoon of that day. They may appoint some competent person as Secretary. The Chairman shall then proceed to administer the constitutional oath (herein prescribed), to each member of the Board as Canvassers, and shall administer the said oath to the Secretary, and the Secretary shall administer to the Chairman the same oath that he shall have administered to the other members of the Board.

They shall then proceed to count the votes of the County, and shall make statements thereof as the nature of the election shall require, within ten days of the time of their first meeting as a Board of County Canvassers, and shall transmit to the Board of State Canvassers any protest and all papers relating to the election.

Duplicate Statements to be Filed.—Duplicate statements shall be made and filed in the office of the Clerk of the County, and, if there be no such Clerk, duly qualified according to law, then in the office of the Secretary of State.

Separate Statements of Votes Given for Each Person Voted For.—They shall make separate statements of the whole number of votes given in such County, for Representatives in Congress, and separate statements of all other votes given for other officers. Such statements shall contain the names of the persons for whom such votes were given, and the number of votes given for each, which shall be written out in words at full length.

Five Separate Statements to be Prepared.—There shall be prepared by the Commissioners, three separate lists of each statement, besides the lists to be filed in the office of the County Clerk, or Secretary of State, and each list shall be certified to as correct, by the signatures of the Commissioners, subscribed to each certificate. (*Ibid*, Secs. 15, 16, 17, 18, and 19, p. 31.)

Return to be Sent by Messenger.—After the final adjournment of the Board of County Canvassers, and within the time prescribed, the Chairman of said Board shall forward, addressed to the Governor and Secretary of State, by a messenger, the returns, poll list, and all papers appertaining to the election. (A. A., 1872, Sec. 4, No. 130.)

Pay of Commissioners, &c., Abolished.—No per diem, mileage, or other compensation shall be allowed or paid to the Commissioners of Elections, the Managers of Elections, or the Clerks appointed by them. (16 Stat., 224.)

Vacancies in Office.—Whenever at any time any vacancy shall occur in any County office, by reason of death, resignation, refusal or neglect

to qualify, of the person elected or appointed thereto, expiration of the term of office, removal from the County, or from any other cause, the Governor shall appoint some fit and proper person to fill the vacancy so caused, and the person so appointed shall hold his office in all cases in which the office is elective, until the next general election for members of the General Assembly, and until his successor should qualify; and in cases of persons appointed, until the adjournment of the General Assembly, at the regular session of 1880; *Provided*, That the Governor may, for cause, remove any person appointed by him under the provisions of this Act (16 Stat., 716.)

3D.—OF OFFENSES AGAINST THE FREEDOM OF ELECTIONS.

Illegal Voting, Fraud, &c., at Elections.—Every person who shall vote at any general, special or municipal election, who is not entitled to vote, and every person who shall, by force, intimidation, deception, fraud, bribery or undue influence, obtain, procure, or control the vote of any elector, to be cast for any candidate or measure, other than is intended or desired by such elector, shall be punished by a fine of not less than one hundred, nor more than one thousand dollars, or by imprisonment in jail not less than three months, nor more than twelve months, or both within the discretion of the Court. (Gen. Stat., C. VII, Sec. 3, p. 28; 16 Stat., 36.)

Bar-rooms and Places for the Sale of Intoxicating Liquors to be Closed.—All bar-rooms, saloons, and other places for the sale of liquors by retail, shall be closed by six o'clock of the evening preceding the day of such election, and remain closed until six o'clock in the morning of the day thereafter, and during the time aforesaid the sale of all intoxicating liquors is prohibited.

The Sale of Liquors Prohibited.—Any person duly convicted before a competent Court of a violation of this section, shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding six months, or both such fine and imprisonment in the discretion of the Court. (Gen. Stat., C. VIII, Sec. 8, p. 30)

Betting Upon Elections.—Whoever shall make any bet or wager of money, or wager of any other thing of value, or shall have any share or part in any bet or wager of money, or wager of any other thing of value, upon any election in this State, shall be deemed guilty of a misdemeanor, and, upon conviction in any Court of Sessions in this State, shall be fined in a sum not exceeding five hundred dollars, and be imprisoned not exceeding one month; one-half to go to the informer, and the other half to the use of the State. (*Ib.*, C. CXXXI Sec. 17, p. 727.)

Voting More than Once at Elections.—If any person qualified by the Constitution and laws of this State to vote at any election for members of the Congress of the United States, members of the Legislature of this State, Sheriff, Clerk, Judge of Probate, or other County officer, Mayor and Aldermen of any city, Intendent and Wardens of any incor-

porated town, officers of the militia or volunteer organizations of the State, or at any other elections now required, or that shall hereafter be required, by law, to be held within this State, shall vote more than once at such election for the same office, such person so voting more than once, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined and imprisoned at the discretion of the Judge before whom the case shall be tried. (*Ibid*, Sec. 18.)

Bribing at.—If at any election hereafter held within this State for members of the Congress of the United States, members of the Legislature of this State, Sheriff, Clerk, Judge of Probate, or other County Officer, Mayor and Alderman of any city, Intendant and Wardens of any incorporated town, officers of the Militia, or organizations of the State, or at any other election now required, by law, to be held within this State, any person shall, by the payment, delivery or promise of money, or other article of value, procure another to vote for or against any particular candidate or measure, the person so promising, and the person so voting, shall each be guilty of a misdemeanor, and, upon conviction thereof, shall, for the first offense, be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, and imprisoned for any term of time not less than one month, nor more than six months; and, for the second offense, shall be fined in any sum not less than five hundred dollars, nor more than five thousand dollars, and imprisoned for any term of time not less than three months nor more than twelve months. (*Ib.*, Sec. 19.)

Offering to procure voters by Bribery.— If at any election, as above mentioned, any person shall offer or propose to procure another, by the payment, delivery or promise of money, or other article of value, to vote for or against any particular candidate or measure, or shall offer or propose, for the consideration of money or other article of value paid, delivered or promised, to vote for or against any particular candidate or measure, such person so offering to procure or vote shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined and imprisoned at the discretion of the Court (*Ib.*, Sec. 20).

Bribing to procure office.—If any person shall, directly or indirectly, offer, give or engage to pay any sum of money or other valuable consideration to another, in order to induce such other person to procure for him, by his interest, influence, or any other means whatsoever, any office or place of trust within this State, or shall offer, give, promise or bestow any reward by meat, drink, or otherwise, for the aforesaid purpose and be thereof convicted, he shall forfeit the sum of not less than one nor more than five hundred dollars, and suffer imprisonment for a term not exceeding six months. (*Ib.*, Sec. 21, p 728.)

Penalty for accepting bribes.—If any person shall receive of another any sum of money, or reward of meat, drink or otherwise valuable consideration, for procuring or assisting to procure, any office or place of trust in this State, for any other person whatever, and be thereof con-

GINEER IS FOUND DEAD AT HIS POST

emphis, Oct. 30.—With the power-engines running at full speed Sam ery, night engineer at the power-e of the New Union station here, found dead at his post of duty ly before midnight last night. kery had been electrocuted. Just the man met his death is a mys- but it is evident that a heavy ge of the electric current passed igh his body, as it was badly ed.

kery came to Memphis from Pa-h, Ky.

LS ARE SUCCESSFUL AS PRACTICAL FARMERS

shington, Oct. 30.—Girls, as prac- farmers, are more of a success the boys, according to officials of department of agriculture, who just completed a report on the ment to instruct girls in the pro- f raising tomatoes and the work ining them. Girls of the state of oma lead in efficiency, say the ltural department reports. The en of the gentler sex in that state and canned this year ninety va- of fruit and vegetables. More 5,000 girls are enrolled in the de- ent's clubs, which are organized es similar to the successful corn- clubs organized for the instruc- boys.

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victed, he shall forfeit the sum of not more than one hundred dollars, and suffer imprisonment at the discretion of the Court having cognizance of the same; and if such offender be in any office, he shall, on the conviction, be disabled from holding the same. (*Ib.*, Sec. 22).

Informer free from arrest.—If either of the parties offending as aforesaid shall give information, upon oath, against the other offending party, and shall duly prosecute such information, such informer shall be free from the penalties aforesaid (*Ib.*, Sec. 23).

Abusing voters &c.—If any person shall, at any of the elections in any city, town, ward or polling precinct, threaten, maltreat, or abuse any voter, with a view to control or intimidate him in the free exercise of his right of suffrage, such offender shall suffer fine and imprisonment at the discretion of the Court (*Ib.*, Sec. 24).

Place of Trial, informers share.—All offenses against the provisions of the four preceding paragraphs, shall be heard, tried and determined before the Court of General Sessions, and the pecuniary penalties accruing thereby shall go, one third to the informer, and the remainder to the State. (*Ib.*, Sec. 25).

ENGINEER.—(RAILROAD.)

Any engineer or conductor of any railroad company in this State who shall wilfully neglect to observe, or shall wilfully violate any rule or regulation of the Company to which such engineer or conductor may belong, whereby any person or persons shall sustain, or be in danger of sustaining any bodily injury, such engineer or conductor shall be liable to be indicted for every such offense, and, upon conviction thereof, be fined two hundred dollars, and imprisoned not exceeding one year, at the discretion of the Judge before whom such case may be tried. *Provided, however*, that nothing herein contained shall be so construed as to relieve such engineer or conductor from responsibility, in cases where the life of any person is destroyed under the law as it now exists. (Gen. Stat., 712.)

ENROLLMENT.

(See Militia.)

ENTICING.

(See Swindling.)

ENTITLING—(AFFIDAVIT.)

An affidavit made without a title, or with a defective title, shall be as valid and effectual, for every purpose, as if it were duly entitled, if it intelligibly refer to the action or proceeding in which it is made. (Code, Sec. 421.)

ESCAPE.

Definition.—An escape is where one that is arrested, gaineth his liberty before he is delivered by due course of law. (*Terms de la Ley.*)

Kinds of.—Escapes are of three kinds:

1st.—By a person who hath the offender in his custody; this is properly called an escape.

2d.—Caused by a stranger; this is commonly called a rescue.

3d.—By the party himself, either without force, which is simply an escape, or with force, which is prison breaking.

Rescues and prison breaking are treated of under their respective titles; and this title treats only of escapes properly so-called; concerning which, the following order will be observed:

1st.—Of Escape by the Party Himself.
2d.—Escape Suffered by a Private Person.
3d.—Escape Suffered by an Officer
4th.—What is a Voluntary and What a Negligent Escape.
5th.—Of the Retaking of a Person Escaped.
6th.—Punishment of an Escape.
7th.—Form of Warrant of Arrest for Escape.

1st.—OF ESCAPE BY THE PARTY HIMSELF.

As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by artifice, before such time as he is delivered by due course of law, is guilty of an high contempt, punishable with fine and imprisonment. (2 Hawk, 122.)

But escape committed by the party himself, belongs more properly to the title, prison breaking.

2d.—ESCAPE SUFFERED BY A PRIVATE PERSON.

It seems to be a good general rule, that whenever any person hath another lawfully in his custody, whether upon a warrant made by himself or another, he is guilty of an escape, if he suffer him to go at large

before he hath discharged himself of him, by delivering him over to some other, who by law ought to have the custody of him. (2 Hawk, 138.)

And the law is generally the same, in relation to escapes suffered by private persons or by officers. (*Ib.*)

3d.—ESCAPE SUFFERED BY AN OFFICER.

Must be an actual and justifiable arrest.—In order to make it an escape, there must be an actual arrest; and therefore, if an officer having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have been in custody, and the party get free, the officer cannot be charged with an escape. (2 Hawk, 229.)

And as there must be an actual arrest, such arrest must be also justifiable; for if it be either for a supposed crime, where no such crime was committed, and the party neither indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large (2 Hawk, 129.)

And as the imprisonment must be justifiable, so it must also be for a criminal offense. (2 Hawk., 129.)

Detainer Must be Lawful.—Also if a prisoner be acquitted, and detained only for his fees, it will not be criminal to suffer him to escape, though the judgment were, that he be discharged, paying his fees, so that till they be paid, the first imprisonment continued lawful as before for inasmuch as he is detained, not as a criminal, but only as a debtor, his escape cannot be more criminal than that of any other debtor; yet, if a person convicted of a crime be condemned to imprisonment for a certain time, and also till he pay his fees, and he escapes after such time is elapsed, without paying them, perhaps such escape may be criminal, for that was a part of the punishment that the imprisonment be continued till the fees should be paid; but it seems that this is to be intended where the fees are due to others as well as to the jailor, for otherwise the jailor will be the only sufferer by the escape, and it will be hard to punish him for suffering an injury to himself only, in the non-payment of a debt in his power to release. (2 Hawk., 129, 130.)

Bailing.—Also it is an escape in some cases, to suffer a prisoner to have greater liberty than by the law he ought to have; as to admit a person to bail, who, by law, ought not to be bailed, but be kept in close custody. (2 Hawk., 130.)

Prisoners Having More Liberty than the Law Allows.—It is a constructive escape, where the prisoner is given more liberty than the law allows, although he still remain in custody. (2 Mason, 486.)

Going Abroad.—So if a jailor, or other officer, shall license his prisoner to go abroad for a time, and to come again; this is an escape, because the

prisoner is found out of the bounds of his prison, though the prisoner return again, according as he shall be prescribed. (Dalt., C. 159.)

Retaking.—If the jailor so closely pursues the prisoner who flies from him, that he retakes him, without losing sight of him, the law looks on the prisoner so far in his power all the time, as not to adjudge such a flight as not to amount at all to an escape; but if the jailor once lose sight of the prisoner, and afterwards retake him, he seems in strictness to be guilty of an escape. And if he kill him in his pursuit, he is in like manner guilty of an escape, though he never lost sight of him, and could not otherwise take him, not only because the State loses the benefit it might have had by the forfeiture of his attainder, but also because the public justice is not so well satisfied by the killing him in such an extra judicial manner. (2 Hawk., 130.)

4TH.—WHAT IS A VOLUNTARY, AND WHAT A NEGLIGENT ESCAPE.

Voluntary.—Whenever an officer, who hath the custody of a prisoner, charged with and guilty of a capital offense, doth knowingly give him his liberty, with an intent to save him from his trial or execution, this is a voluntary escape. (2 Hawk., 130.)

Negligent.—A negligent escape is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again, before he hath lost the sight of him. (Dalt., C 159.)

If Prisoner Kill Himself.—If the Constable or other officer shall voluntarily suffer a thief, being in his custody, to go into the water to drown himself, this escape is felony in the Constable, and the drowning is felony in the thief; otherwise, if the thief shall suddenly, without the assent of the Constable, kill, hang or drown himself, this is but a negligent escape in the Constable (Dalt., C. 159.)

5TH.—OF THE RETAKING OF A PERSON ESCAPED.

Not if the Prisoner be Let Go.—If an officer hath arrested a man by virtue of a warrant and then taketh his promise that he will come again, and so letteth him go, the officer cannot, after arrest, take him again by force of his former warrant, for that this was by the consent of the officer; but if he return, and put himself again under the custody of the officer, it seems that it may be probably argued, that the officer may lawfully detain him, and bring him before the justice in pursuance of the warrant. (Dalt., C. 169; 1 Hawk , 81.)

But if the party arrested had escaped of his own wrong, without the consent of the officer, now upon fresh suit, the officer may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. (Dalt , C 169.)

In Negligent Escape.—And it is said generally, in some books, that an officer, who hath negligently suffered a prisoner to escape, may retake him wherever he finds him, without mentioning any fresh pursuit; and, indeed, since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason why he should take any manner of advantage from it. (2 Hawk., 131, 132.)

And whenever a man is lawfully arrested for any cause, and afterward escapes and shelters himself in an house, the doors may be broken open to take him, on refusal of admittance. (2 Hawk., 87.)

It is perhaps the better opinion, that whenever a prisoner, by the negligence of his keeper, gets so far out of his power that the keeper loses sight of him, the keeper is punishable for the escape, notwithstanding he retook him immediately after; and it is clear, that he cannot excuse himself from an escape, by killing a prisoner in the pursuit, though he could not possibly retake him; but must, in such case, be content to submit to such punishment, as his negligence shall appear to deserve. (2 Hawk., 132.)

6TH.—PUNISHMENT OF AN ESCAPE.

1. At Common Law.
2. By Statute.

1.—AT COMMON LAW.

If a felon escapes before arrest, it is not punishab'e in him as felony. (Hale's Pl., 111.)

By Private Person.—If a private person arrest a felon, and he escape by force from him, it seems it excuseth the party, because he cannot raise power to assist him; but if a Constable or other have the custody of a prisoner, bringing him to jail, it seems that a simple escape by the rescue of the prisoner himself, doth not wholly excuse him, because he may take sufficient strength to his assistance. (1 H. H., 601.)

Fine.—Whenever a person is found guilty, upon an indictment or presentment, of a negligent escape of a criminal, actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offense. (2 Hawk., 136, 139; 1 H. H., 600, 604.)

Sheriff Liable for His Bailiff.—And it seems to be the better opinion, that the Sheriff is as much liable to answer for a negligent escape, suffered by his bailiff, as if he had actually suffered it himself, and that the Court may charge either the Sheriff or bailiff for such an escape; and if a deputy jailor be not sufficient to answer a negligent escape, his principal must answer for him. (2 Hawk., 135.)

If a prisoner for felony break the jail, this seems to be a negligent escape of the jailor, because there wanted either that due strength in the jail that should have secured him, or that due vigilance in the jailor, or his officers, to have prevented it; and therefore it is lawful for the jailor to hamper them with irons to prevent their escape; for if jailors

might not be punished for this, as a negligent escape, they would be careless either to secure their prisoner, or to retake them that escape. (1 H. H., 601.)

It seems to be generally agreed, that a voluntary escape suffered by an officer, amounts to the same kind of crime, and is punishable in the same degree, as the offense of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass. (2 Hawk, 134.)

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given, and the party not dying till after the escape. (Dalt., c. 159.)

By a Wrongful Jailor.—Also, a voluntary escape, suffered by one who wrongfully takes upon him the keeping of a jail, seems to be punishable in the same manner as if he was never so rightfully entitled to such custody; for that the crime is in both cases of the same ill consequence to the public, and there seems to be no reason that a wrongful officer should have greater favor than a rightful, and that for no other reason but because he is a wrongful one.—(2 Hawk, 134.)

Principal not Punished.—But it seemeth clear that no one is punishable as for felony, for the voluntary escape of a felon, but the person who is actually guilty of it; and therefore that the principal jailor is only finable for a voluntary escape suffered by his deputy, for that no one shall suffer capitally for the crime of another.—(2 Hawk. 135.)

And therefore, although in civil cases the Sheriff is to be responsible, or his jailor, at election, yet if the jailor do voluntarily suffer a felon in his custody to escape, this, inasmuch as it reacheth to life, is felony only in the jailor that was immediately trusted with the custody, and not with the Sheriff.—(H. H. 597.)

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high Sheriff, though it were such in the jailor, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners that would be false to his trust, and therefore the Sheriff shall pay, but not corporally suffer for the miscarriage of his jailor.—(H. H., 597, 598.)

But although the felony for which a man is committed be not within clergy, yet the person who voluntarily suffers him to escape, shall have the benefit of clergy.—(1 H. H., 599.)

(2.)—By Statute.

Voluntary Escape from Prison.—If any Sheriff, Deputy-Sheriff, Jailor, or other officer, wilfully suffer a prisoner in his custody, under conviction, or under any criminal charge, to escape, he shall suffer like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer, upon conviction of the crime or offense wherewith he stood charged.—(Gen. Stat., 165.)

Attempts to an Escape from Prison and Rescuing Prisoners.—Whoever conveys into a Jail, House of Correction, State Penitentiary, House of Reformation, or other like place of confinement, any disguise, instrument, tool, weapon, or other thing adapted or used to aid a prisoner in making his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or by any means aid or assist such prisoner in his endeavor to escape therefrom, whether such escape is effected, or attempted, or not, and whoever forcibly rescues any prisoner held in custody upon any conviction or charge of offense, shall be punished by imprisonment in the State Penitentiary, at hard labor, not exceeding seven years, or, if the person whose escape was effected or intended, was charged with an offense not capital, nor punishable by imprisonment, then by imprisonment in the State Penitentiary, at hard labor, not exceeding two years, or by fine, not exceeding five hundred dollars.—(*Ib.*, Sec. 726.)

Aiding in an escape from an officer.—Whoever aids or assists a prisoner in escaping, or attempting to escape, from an officer or person who has the lawful custody of such prisoner, shall he punished by imprisonment in the State Penitentiary at hard labor, not exceeding two years, or by fine, not exceeding five hundred dollars. (*Ib.*, Sec. 14).

For connivance at escape.—If any person employed in keeping, taking care of or guarding the penitentiary, or the prisoners therein, shall contrive, procure, connive at, or otherwise voluntarily suffer or permit the escape of any such prisoner or prisoners, he, on conviction thereof, shall be confined at hard labor in the penitentiary, not exceeding twenty years. (*Ib.*, Sec. 16, p. 765.)

FORM NO. 121.—ARREST WARRANT AND AFFIDAVIT FOR ESCAPE.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ———. }

By A. B., Trial Justice in and for the said County and the said State:

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at ——in the County and State aforesaid, on the——day of——18—, one E. F., being arrested by him the said C. D., a constable, by virtue of a warrant for (*insert the offense*), regularly issued and to him directed, the said E. F., so being taken and arrested with force and arms, did make his escape from him the said C. D.

These are, therefore, to command you to apprehend the said E F., and bring him before me to be dealt with according to law.

Given under my hand and seal, the —— day of ——18—.

A. B. [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

Personally appeared before me A. B., a Trial Justice of the said County and the said State, C. D., who being duly sworn says: That at Marion in the said county and State, on the —— day of —— A. D., 18—, E. F., having under arrest by him the said C. D , a constable, by virtue of a warrant for (*offense*) to him directed; the said E. F., so being taken and arrested by him the said C. D., with force and arms, did make his escape from him the said C. D., against the will of the said C. D., in contempt of the said warrant and contrary to the laws in such case made and proved.

That &c., are material witnesses thereto.

Sworn to before the —— day of —— 18—,
A. B.,
Trial Justice.
C. D.

ESTRAY

Is where any horses, sheep, cows, or other tame beasts are found wandering about, and their owner is unknown.

1st.—Rights and Duties of Parties where Estray is found.
2d.—Of Proceedings after return to Trial Justice.

1st.—RIGHTS AND DUTIES OF PARTIES WHERE ESTRAY IS FOUND.

To be advertised and taken before Trial Justice for appraisement.—If any estray shall be found wandering in or about the plantation of any freeholder or settled resident, he, she, or they are hereby authorized and empowered to take the same into possession; and shall advertise the same within three days thereafter, in three or more public places in the said county, wherein the said person or persons, so taking up the said estray, may reside; and the said person or persons shall, within ten days after advertising as aforesaid, take such estray to the nearest Trial Justice, excepting hogs, sheep, neat cattle or goats, which shall be appraised at the place taken up. (Gen. Stat., C. LXXI, Sec. 1st p. 384-5.)

Compensation for keeping.—As a compensation for keeping and maintaining estrays until the time of sale, it shall and may be lawful for the taker up, at his option, either to put them at moderate labor or use, if a horse, mare or gelding, ass or mule, or to demand and receive therefor such a reasonable allowance as the Court of Trial Justice shall judge adequate; *Provided always*, That when any estray shall have been put to labor or use, the taker up shall be obliged to produce it at the time of sale, unavoidable accidents excepted, in as good order and condition as it was when appraised; and shall be liable to an action for damages by the owner of any such estray, for abuse thereof, if the said owner shall claim the said estray within the time prescribed in this chapter. (*Ibd.* Sec. 8, p. 386).

Penalty for not Pursuing the Provisions Herein.—Each and every person who shall take into his or her possession, any estray, and neglect to pursue the directions herein, or shall convert to his or her use any such estray, shall be liable to a fine of twenty dollars, to be recovered, upon information, in any Court of record having jurisdiction of the same, in this State, to be given to the informer; and shall also be liable to an action by the owner of any such estray for damages.—(*Ib.*, Sec. 11, p. 386.)

If any person shall wilfully suffer any stone horse, above the age of twenty months, to run at large in the woods, it shall be lawful for any person to catch and geld such horse; and he shall have a right to recover from the owner thereof two dollars and fifty cents for so doing, any law to the contrary notwithstanding.—(*Ib.*, Sec. 9.)

2D.—PROCEEDINGS AFTER RETURN TO TRIAL JUSTICE.

Appraisement, Certificate of to be Filed.—Every Trial Justice before whom an estray shall be returned, shall cause the same to be appraised, on oath, by three proper persons in the vicinity, who shall certify their appraisement under their hands, together with an accurate description of the color, size, age, brands and marks of said estray, whereupon the said Trial Justice shall enter the said certificate at large in his book; and shall, within ten days thereafter, send a duplicate of said certificate to the Clerk of the Court of the County in which the said estray shall be taken up.—(*Ib.*, Sec. 2.)

To be Advertised by Trial Justice.—At the same time the Trial Justice shall cause the estray, if other than a horse or mule, to be advertised at three or more public places in the County, one of which shall be on the Court House door, for two months, together with a notice where said estray is to be found; and, if a horse or mule, by advertising at the same places and in the nearest gazette once a month for four months.—(*Ib.*, Sec. 3.)

To be Sold.—When no owner shall appear and prove his property within the time directed for advertising, it shall be lawful for such Trial Justice, and he shall cause the same to be publicly advertised for ten

days, and sold on a credit of six months, except the costs to be paid in cash; and the purchaser shall give his note, with approved security, to the Trial Justice, in the name of the County Commissioners in the County wherein such estray shall be taken up; which note the said Trial Justice shall deliver immediately to the County Commissioners for the County in which such estray shall be taken up, who shall have power, in default of payment, to sue for and recover the same.—(*Ib.*, Sec. 4.)

Pay for Advertisement.—For printing the said advertisement the printer shall be entitled to one dollar, which shall be paid by the owner of such estray, or taken out of the sales of the same.—(*Ib.*, Sec. 5.)

Owner may Claim before Sale and before Maturity of Note.—Disposition of Purchase Money.—If any person shall put in a just and lawful claim to such estray at any time after the sale, and before the note becomes due, the County Commissioners are hereby directed to give up the note to the claimant, on his paying the customary fees; but if no such owner shall appear, the Commissioners shall cause the amount of the same to be collected and appropriated to the repairs of the high roads and bridges in the highway district where such estray shall be taken up. And in case any part of the moneys aforesaid remains unappropriated, in the hands of the Commissioners, they shall appropriate the same to the use of the poor.—(*Ib.*, Sec. 6.)

Amount, &c., to be Recorded.—The Clerk of the Court shall file the duplicate certificate of the appraisers and Trial Justice, in all instances of estrays taken up, when the same shall be returned, and also the certificate of such Trial Justice, of the amount and disposition of the funds ensuing therefrom.

Record Open to Inspection.—The same being entered in the book of estrays, which shall always be subject to the inspection of any person desiring to examine the same free of charge (*Ib*, Sec. 7.)

Penalty for Failure of Trial Justice and Clerk to Perform Duties Under this Chapter.—If any Trial Justice or Clerk of Court, or person taking up an estray, shall refuse or neglect to perform the duties herein prescribed, each and every of them shall forfeit and pay the sum of twenty-five dollars, to be recovered and applied to the use of any person who shall inform and sue for the same, and moreover shall be liable in damages to the party aggrieved. (*Ibid*, Sec. 10)

ESTREAT.

(*See Recognizance—Forfeiture of.*)

due by color or pretence of right; or excessive toll in millers, excessive prices of ale, bread victuals, wares, &c.

But in a strict sense, it signifies, the taking of money by an officer, by color of his office, either where none is due, or not so much is due or where it is not yet due. (2 Burn's Justice, 134.)

It is generally agreed, that no public officer shall take any other fees or rewards, for doing anything relating to his office, than some statute in force gives him, or has been anciently and usually taken; and if he do otherwise, he is guilty of extortion. (Dalt., C. 41.)

It seems that an officer who takes a reward that is voluntarily given him, and which has been usual in certain cases, for the more diligent or expeditious performance of his duty, cannot be guilty of extortion. (2 Just., 210.)

But a promise to pay such reward, however freely and voluntarily made, is void. (1 Hawk., 171.)

2D.—ITS PUNISHMENT.

At the common law this offense was severely punishable, at the suit of the State, by fine and imprisonment, and also by a removal from the office, in the execution whereof it was committed.

"If any Judge of Probate, Clerk of Court, Trial Justice, Sheriff or Constable shall charge any other fees, or for any other services than allowed by Statute, such officer shall be liable to forfeit to the party injured ten times the amount of excess of fees improperly charged, to be recovered by suit in the Court of Common Pleas." (Gen. Stat., 205.)

EYE, PUTTING OUT.

(*See Mayhem.*)

FACTORS.

Failing to Account for Produce.—If any factor or commission merchant shall receive from any planter any cotton, rice or other agricultural produce for sale, and shall sell the same and fail to pay over the net proceeds thereof to the planter on demand, or to apply the same to his own use and benefit, or shall fail to account for the same in a satisfactory manner if unsold, he shall be guilty of fraud and embezzlement, and, on conviction thereof, shall be imprisoned in the Penitentiary not less than one year, nor more than five years, at the discretion of the Court. (16 Stat. 250, Sec. 2.)

No person shall be convicted under the above section if he can show that the cotton, corn, rice or other products received by him was destroyed by accident, after due diligence on his part, or that he was forcibly deprived of the possession thereof. (*Ibid*, Sec. 3.)

FALSE IMPRISONMENT.

An Assault.—An unlawful imprisonment is an assault, for it is a wrong done to the person of a man, for which, besides the private satisfaction given to the individual by action, the law also demands public vengeance, as it is a breach of the peace.

What Constitutes an Unlawful Imprisonment.—To constitute the injury of false imprisonment, there must be an unlawful detention of the person, either by confinement in a common prison, in a private house, or by forcible detention in the streets. And the detention will be unlawful, though the party have a regular process, if it be executed at an unlawful time, as on Sunday. (1 Russ. on Cr., 607.)

FALSE PRETENCES.

A false pretence is a false representation and statement, made with a fraudulent design, to obtain "money, goods, wares, and merchandise," with intent to cheat. (2 Bouv. Inst., Sec. 2308.)

1st.—What Constitutes a False Pretence.
2d.—What must Concur with a False Pretence.
3d.—Punishment.

1*st.*—*What Constitutes a False Pretence.*

(1) The pretence must be false.

(2) The false pretence must be of some existing fact, in distinction alike from a mere promise and a mere opinion, and this fact must be such in its nature as is known to the person employing the pretence.

(3) The pretence must be of some matter sufficiently proximate to the obtaining of the goods.

Must be False.—(1) *That the pretence must be false.*—The most obvious proposition is, that the pretence must be false. And the doctrine undoubtedly is, that, if it is not false, though believed to be so by the person employing it, it is not sufficient Thus if a man passes as good the note of a bank which has stopped payment, yet if there is found to be liable on it some party not a bankrupt, he cannot be convicted of this cheat. (2 Bishop on Cr. Law, Sec. 347.)

Promise, Future Event, &c.—(2) *Must be of some existing fact, &c.*—In the next place, a *promise* is not a pretence. And if a man says that he will do an act which he does not mean to do, as that he will pay for goods on delivery, his purpose being to defraud the seller of them, is not a false pretence. And both in the nature of things, and in actual adjudication, the doctrine is, that no representation of a future event, whether in the form of a promise or not, can be a pretence within the

Statute, for the pretence must relate either to the past or to the present. (*Ibid*, Secs. 348 and 349.)

Opinion.—An opinion, a mere opinion, is not a false pretence; but any statement of a present or past fact is one, if it is false. When two men are negotiating a bargain, they may express opinions about their wares to any extent they will; answering, if they lie about the opinions, only to God, and to the civil department of the law of the country. But when the thing concerns a fact, as distinguished from an opinion, and a man knowingly misstates the fact, his words in reason amount to a false pretence.

In most cases, what is said concerning the quality of an article is, doubtless, matter of mere opinion, as representing a horse as gentle that afterwards runs away.

An indictment, alleging that the defendant falsely pretended a sum of money, parcel of a certain larger sum, was "due and owing" to him for work which he had executed for the persons to whom the pretence was made, whereby, etc., was held not to be sufficient. The allegation was not of a false pretence of an existing fact; because it might be satisfied in the proof, by showing a mere matter of opinion on the part of the defendant concerning facts complicated with questions of law. (*Ibid*, Sec. 354 and 372.)

3. *Proximate to the Fraud.*—Another point is, that the pretence must be of some matter sufficiently proximate to the obtaining of the goods. Therefore, in a case where the person had falsely represented that he was a naval officer, upon which he made with the prosecutrix a contract for board and lodging, at a certain price, and was lodged and fed as the result of the contract, the pretence was held not to be sufficient, because the supply of articles upon the contract made by reason of the false pretence was too remotely the result of the false pretence in this particular instance, to become the subject of an indictment for obtaining those specified goods by false pretences. Yet the mere fact of a contract interveneing between the pretence and the consumated fraud, does not of itself take away the indictable quality of the transaction. (2 Bish., Sec. 357.)

Illustrations of False Pretences.—A common instance is where one represents himself or his firm to be in a sound pecuniary condition, or worth so much money, knowing the facts to be otherwise, or falsely pretends to have a particular fund in his hands or another's, whereby he gains a credit. Or the representations may be concerning his business, situation, or standing in life. (*Ibid*, 360.)

When a man passed out to another person for change a bank note saying it was for £5, when really it was, *as he knew*, for only £1, and received the change accordingly, he was held to have committed this offence, though the person to whom he passed the note could read.

In a case on the sale of a cheese at a fair. Before the prosecutor bought it, the prisoner bored it with an iron scoop, and produced a piece,

called a "taster," at the end of the scoop, for him to taste. This taster was not in fact taken from the cheese, as it appeared to be, but the prisoner had extracted it from another and superior cheese, and fraudulently inserted it into the top of the scoop. The prosecutor tasted, was satisfied, bought, and the prisoner was held by the Judges on a case reserved, to be rightly convicted.

In Maine where the owner of a horse pretended it was a particular horse, called the Charley, knowing it was not, and thereby effected an exchange of it for other property, the Court held this to be a sufficient false pretence, even if the horse were as good and as valuable as the Charley.

Where the prisonor offered a chain in pledge to a pawnbroker, falsely and fraudulently affirming it to be of silver, while in truth he knew it to be not of silver, but of a metal nearly valueless, the Court held that this was a sufficient false pretence. (*Ibid*, Secs. 359, 368, 370 and 372.)

False Personating.—False personating is a false pretence; for instance, where one, to obtain money, falsely represented himself to be Mr. H. who had cured Mrs. C. at the Oxford Infirmary, he was held to be indictable for the cheat effected thereby. And so generally is the assuming of a false name, or even a fictitious one, a false pretence; though here, as in all other cases, there must be necessary fraud attending the act. And where a person, with a money order upon a postoffice, falsely assumed to be the individual mentioned on it, and so got it cashed, he was held to have committed this offence, notwithstanding when he received the money he signed his real name, which was Story, while the name mentioned in the order was Storer. (*Ibid*, Sec. 361.)

Forged Orders.—So, although a representation, which is untrue, of being authorized to get money or goods for a person is not a false token, it is a false pretence.

A fortiori, this is so also, if the party making the representation carries with him, as from the person, a forged order. (*Ibid*, 362)

Need Not be in Words.—*A false pretence need not be in words.*—The pretence need not be in words, but it may be sufficiently gathered from acts and conduct of the party. The fact of uttering a counterfeit note as a genuine one, is tantamount to a representation of its being genuine,

2d.—WHAT MUST CONCUR WITH A FALSE PRETENCE.

(1.) The rule is that the fraud must be accomplished, in order to constitute the complete offense (Commonwealth *vs.* Drew, 19 Pick, 179.)

(2.) The false pretence must be the instrument of the cheat; when a person is defrauded, if the false pretence did not prevail with him, but something else did, the case of the defendant is not within the Statutes. (*Ibd*, Sec. 375.)

Need not be the Only Inducement.—The pretence, however, need not have been the only inducement; but if operating either alone or with other causes, it had a controlling influence, and so but for it, the person to whom it was addressed would not have yielded, this is sufficient. (People *vs.* Haynes, 11 Wend., 555.)

(3.) The pretence must be believed by the person to whom it was addressed.

Intent.—4. There must be an *intent to defraud*, which intent may, as in other criminal cases, be inferred from the act. And the false pretences must have been used for the purpose of perpetrating the fraud. (2 Bish., 385.)

The intent is all that is requisite; it is not necessary that the party defrauded should sustain any loss. (11 Wend. R., 18.)

3D.—PUNISHMENT.

A Misdemeanor.—The offense of obtaining property by false pretences is a misdemeanor and punishable by fine and imprisonment.

By A. A., 1876, No. 42, p. 39: "If any person or persons shall, by any false pretence or representation, obtain the signature of any person or persons to any written instrument, or shall obtain from any other person or persons, any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud any person or persons of the same, every such offender shall be guilty of a misdemeanor, and, on conviction, be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment not exceeding three years: *Provided, always*, That if, upon the trial of any person or persons indicted for such a misdemeanor, it shall be proved that he or they obtained the property in such a manner as to amount in law to larceny, he or they shall not, by reason thereof, be entitled to be acquitted of such misdemeanor; and no person or persons tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts."

An attempt to commit this offense is indictable as a common law misdemeanor.

FORM NO. 124.—ARREST WARRANT FOR FALSE PRETENCE.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——— }

By A. B , Trial Justice in and for the said County and the said State.

To any lawful Constable:

Whereas, complaint has been made unto me by C. D., that at ———, in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E. F., knowingly and designedly, by false pretences, did obtain from him, (*here state what,*) of the value of ——— dollars, of the proper goods and chattels of him, the said C. D., with intent to defraud him, the said C. D., of the same.

These are, therefore, To command you to apprehend the said defendant, E. F., and bring him before me to be dealt with according to law.

Given under my hand and seal, the —— day of ———, 18—.

A. B., [L.S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

Personally appeared before me, A. B., a Trial Justice of the said County and the said State, C. D., who, being duly sworn, says: That at ———, in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E F., knowingly and designedly, by falsely pretending that (*here state the pretence or pretences,*) did fraudulently and deceitfully obtain and get into his hands and possession, (*here mention the things,*) of the value of ——— dollars, of the proper goods and chattels of him, the said C. D., with intent to defraud him, the said C. D., of the same, contrary to the Statute in that case made.

That X., Y. and Z. are material witnesses thereto.

Sworn to and subscribed before me this —— day of ——, A. D. 18 —.
A. B.,
Trial Justice.
} C. D.

FALSE SWEARING.

(*See Perjury.*)

FALSE TOKEN.

(*See Cheats.*)

FEES.

1ST.—AMOUNT OF FEES.
2D.—BY WHOM PAID.
3D.—FORM OF ACCOUNT AND AFFIDAVITS THERETO.

1ST.—AMOUNT OF FEES.

1st. Of Trial Justices.
2d. Of Constables.

1ST. OF TRIAL JUSTICES.

Oath and warrant in criminal case	$ 40
Each recognizance	40
Each commitment and release	20
Administering and certifying oath in writing other than above	30
Issuing writ of *habeas corpus* to the two Trial Justices jointly	1 50
Issuing summons and copy for defendant in civil cases	35

Issuing summons for witness in any civil case	20
Taking examination of witnesses in writing in any case as prescribed by law	50
Giving judgment on hearing litigated case	25
Giving judgment in case not defended	20
Giving execution or renewal	25
Report of case and taking bond to appeal	60
Giving attachment returnable to Court of Trial Justice, including all notices	1 00
Filing return of garnishee and order thereon	15
Proceeding on behalf of landlord or lessor against tenant or lessee, to the two Trial Justices	5 00
Proceedings on certifying indenture of apprentice or assignment	1 00
Trial of any criminal case, inclusive of all costs except issuing papers	1 00
Preliminary examination of any criminal case	50
Proceedings on Coroner's inquest, as prescribed by law	8 50
Proceedings on estray of horse or mule	50
Proceedings in all other estrays, each	15
Taking and certifying renunciation of dower or inheritance	2 00
Granting order for special bail	50
Qualifying each Appraiser in setting off Homestead, besides five cents per mile for all travel actually necessary.	25

2d—BY WHOM PAID.

IN CIVIL CASES.

In civil cases, the unsuccessful party is liable for the fees; but in case the decree or verdict be against the defendant, and he be unable to pay, the plaintiff becomes liable to pay the same.

In any civil action under the Code, Trial Justices and Sheriffs shall be entitled to demand and receive of the plaintiff, in any such action, in advance, the same compensation as is allowed by law. (15 Stat., 190.)

CRIMINAL CASES.

In criminal cases, the fees of Trial Justices and Constables must be paid by the defendant, if convicted. If not convicted, or the proceeding be stopped at the instance of the State, or the Grand Jury find no bill, or the Solicitor *nol pros.*, or the defendant be unable to pay, then the fees will be paid by the County.

No account of any Trial Justice, for fees, in any criminal cause, shall be paid, unless he shall declare, on oath, that the costs in the said cause have not been received of the defendant, and that he, the defendant, was unable to pay the same, and further, that all fees and penalties theretofore collected by such Trial Justice, have been faithfully and fully paid over to the County Treasurer of the County. (Gen. Stat., C.XXV., Sec 49, p. 204.)

there was no warrant of a justice to raise hue and cry, and no Constable in pursuit, yet the hue and cry was a good warrant in law for the pursuers to apprehend the felons. (1st Russell, 502.)

Private Persons.—But where private persons use their endeavors to bring felons to justice, some custom ought to be observed. In the first place, it should be ascertained that a felony has been committed, or actually attempted by the party arrested; for no suspicion, however well founded, will bring the person endeavoring to arrest without warrant, under the protection of the law; but a person detected in an attempt to commit a felony, may be detained without warrant, until carried before a Magistrate. (*Ibid.* See also Compounding and Misprison.)

FEME.

(*See Women.*)

Exempt from Arrest, Except.—No female shall be arrested in any action, except for a wilful injury to person, character, or property. (Code, Subd. 5, Sec. 202.)

FENCES.

What are Lawful Fences.—All fences closely and strongly made of rails, boards, or posts and rails, or of an embankment of earth capped with rails or timber of any sort, or low hedges, five feet in height, measured from the level or surface of the earth, shall be taken and deemed to be lawful fences; and every planter shall be bound to keep such lawful fence around his cultivated grounds.

When Navigable Stream is a Lawful Inclosure.—Except where some navigable stream or deep water-course shall be a boundary of such cultivated grounds, in which case such navigable stream or water-course shall be deemed a sufficient fence; *Provided, always*, That, before he avails himself of the provisions of this Section, he shall apply to a Trial Justice of the County, who shall, from the names of seven tax-payers or legal voters of the vicinage, draw, by lot, three, who are hereby required to view the premises, and pronounce upon the sufficiency of the said water as an inclosure, according to the true intent and meaning of this Section. (Gen. Stat., C. L., p. 296.)

Horses, &c., Breaking In.—If any horses, mules, cattle, hogs, sheep, or goats, shall break into or be found in any field, in which shall be growing or ungathered, any grain, cotton or vegetable production, raised for market or domestic consumption, the said field being enclosed with a lawful fence, according to the provisions of this Chapter, it shall be

lawful for the owner of such field to seize such horses, mules, cattle, hogs, sheep or goats, and to keep them in confinement until he shall have notified, within six hours after such seizure, the owner or his agent, who shall be bound to pay to the owner of such field, all damages which he or she may have sustained thereby.

If Fence be Unlawful.—But if it should appear that the fence inclosing such field is not a lawful fence, the verdict should be for the defendant. (*Ibid.*)

Penalty for Injuring Animals Trespassing where Fence is not Lawful.—If any person whose fields are not enclosed by a lawful fence, shall kill, wound, maim, chase, worry, or in any manner injure, any horses, mules, cattle, hogs, sheep or goats, which shall be found in such field, whether cultivated or not, or shall cause or procure the same to be done by any other person, such person so offending, shall be liable to an action, and the plaintiff shall recover full satisfaction for the injury, with costs, if the verdict exceed four dollars. (*Ibid.*)

The above sections shall not apply to the Islands of Edisto Wadmalaw, John's Island and James Island, and fences shall not be required to be kept around cultivated grounds on the said islands. (*Ibid.*)

The "No Fence" Law—Where Exists—The Boundaries of Lands a Lawful Inclosure.—In the several Counties and Townships in this State, where the electors have already or shall hereafter adopt the provisions of the Act, (A. A., 1878, No. 386,) commonly known as the Fence Law, the boundary lines of the lands of the inhabitants within the territory so adopting the same, shall be deemed and taken to be a lawful enclosure thereof.

Misdemeanors to Allow Cattle to Trespass Upon Lands.—And the owner or manager of any horse, mule, ass, genet, swine, sheep, goat, or neat cattle of any description, who shall wilfully, knowingly and unlawfully or negligently permit the said animals or any of them, to go upon the lands of any owner or occupant situate in any such County or Township, shall be deemed guilty of a misdemeanor, and, on conviction in any Court of competent jurisdiction, shall be fined in a sum not exceeding thirty dollars, or imprisonment for not more than thirty days, or both, in the discretion of the Court. (16 Stat. 400, Sec. 1st.)

Owner of Stock trespassing, liable for damages.—That the owner or managers of any of the live stock aforesaid, in addition to the penalties provided in the preceding Section, shall be liable to the owner or occupier of any of the lands situated as aforesaid for all the damages, he or she may have sustained by the depredations of any such stock, to be recovered by action of debt in any Court having competent jurisdiction, and the stock that caused the damage shall be held liable to pay the same in preference to all other liens, encumbrances or claims against the same.

Proviso.—*Provided*, that the owner or manager of the stock shall show to the satisfaction of the Court that the damages were commited with-

out fault or negligence on his or her part, such showing shall be held a sufficient defense. (*Ibd.*, Sec. 2d.)

Misdemeanor to destroy fencing.—Any persons other than owners or their agents so moving or destroying any part or the whole of any fence intended to enclose animals of any kind, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine or imprisonment, or both, at the discretion of the Court. (*Ibd.* Sec. 3.)

Anderson and Chester County Commissioners to erect fences on County lines.—In the Counties of Anderson and Chester, where a majority of the townships have adopted or shall hereinafter adopt the provisions of the fence law, it shall be lawful for the County Commissioners to erect fences on the County lines instead of on the lines of townships, and for that purpose they are invested with all the powers conferred on them in cases where the entire County shall have adopted the said fence law. (*Ibd*, Sec. 4.)

County Commissioners to erect gates.—That *it* shall be the duty of the County Commissioners of every County which has adopted or may adopt the provisions of the Act, to erect substantial and convenient gates in fences at the crossways of all public highways and neighborhood roads; and when the inhabitants or any of them shall desire a crossway on their own lands they shall be permitted to erect and keep up such gates at their own expense.

Misdemeanor to damage or to leave open gates. And any person who shall wilfully and unlawfully leave open any of the said gates, or do any wilful damage to the gates or fences erected for the purpose aforesaid, shall be deemed guilty of a misdemeanor, and, on conviction in any Court having competent jurisdiction, shall be find in a sum not exceeding twenty dollars or imprisoned not more than twenty days. (*Ibd.*, Sec., 5.)

Misdemeanor to travel outside of road.—It shall be a misdemeanor for any person to wilfully ride, drive or allow his team to travel outside of the road on the cultivated lands of private parties, and, upon conviction thereof, shall be fined not less than five nor more than twenty dollars, or be imprisoned not less than five nor more than twenty days.

Proviso.—*Provided*, That in case any person charged with this misdemeanor be brought before or reported to a Trial Justice, he may discharge himself from any further proceedings thereon by paying such fine within the above limits as the Trial Justice may impose. (*Ibd* Sec. 6).

FERRIES AND BRIDGES.

1st.—How and where Bridges and Ferries may be Established.
2nd.—Of the Duties, Liabilities, and rights of the Owners or Keeper.
3d.—Rates of Collecting Toll, and of Persons Exempt.
4th Fines and Penalties, and how Recovered.

1st.—HOW AND WHERE ESTABLISHED.

Notice of application for charter.—No road, bridge, or ferry, shall be established by law, unless the person or persons petitioning for the same shall have given notice to the County Commissioners in the County or Counties in which the said road, bridge or ferry is intended to be established, at least six months before the Session of the Legislature, and shall bring to the Legislature a certificate of the same, from the Board of County Commissioners. (Gen. Stat., 287.)

How Re-Chartered.—No ferry, the charter of which shall have expired, shall be re-chartered by the Legislature unless the person or persons so applying shall advertise his intention of doing so within three months previous to the meeting of the Legislature, to which such application shall be made, and at three of the most public places in the neighborhood of the ferry. (*Ibid*, Sec. 10, p. 280)

Right to Establish in the Legislature.—The right to establish ferries is an incident of sovereignty, and no individual has a right to establish one without permission of government, and the owner of one thus established, is protected in his right, and if another set up a ferry near to his, without public authority, he may maintain an action against him for a nuisance. (Stark ads. McGowen, 1 N. and McC., 387.)

Also, the State may proceed by *quo warranto*. (Blisset *vs.* Hart, Willis, 512.)

Applications for Charters, How Made.—Every application to the Legislature to grant a charter for any bridge ferry or turnpike road shall be by petition, in which shall be set forth particularly the site on which it is to be constructed or kept, and shall be enumerated all the chartered bridges, ferries and turnpike roads within ten miles of any part of the work so intended to be constructed or kept, and in it shall be stated the public convenience which requires the grant, and the said petition, together with a notice that it is intended to present it to the next Legislature, shall be published in some gazette, printed at the seat of government or in the county in which some part of said work is intended to be constructed or kept, at least once in each month for the term of three months next preceding the month in which the Legislature to which the petition is intended to be presented, is to commence its session.

Opposition, How Made.—And where any proprietor or proprietors of any chartered bridge, ferry or turnpike road, his, her or their agent, master or attorney, may give notice, in writing, to the petitioner, or any one of the petitioners, two months before the meeting of the Legislature to which the petition is to be presented, that the grant will be opposed, and in the said notice shall state the grounds for such opposition, then, and in that case, all the evidence for and against such grant shall be taken on oath, and in writing, before the Clerk of the Court of the County where is situated some part of the work so intended to be constructed or kept. But before any evidence shall be so taken, the party offering it shall give at least ten days notice to some one of the opposite party, of the time and place of taking such evidence, and whenever such charter shall be granted without all the requisites of this Section being complied with, the said charter may be repealed by action at the suit of the proprietor or proprietors of any previously chartered bridge, ferry or turnpike road, any part of which may be situated within ten miles of any part of the bridge, ferry or turnpike road so illegally chartered. (*Ibid*, Sec. 40.)

Commissioners to be Appointed to Superintend Works.—The proprietor or proprietors of each and every bridge, ferry, or turnpike road, and the County Commissioners of the County to which the work is subject, shall appoint immediately after the completion of the said work, and before any toll or ferriage is received thereat, and at the expiration of every three years thereafter, three persons who shall be Commissioners of the said work, and when the above named parties do not agree, or whenever the Legislature by resolution or act order a new Commission, the said Commissioners shall be appointed by the Court of Common Pleas of the County in which the whole or any part of the said work may be situated; but before such appointment shall be made the Attorney-General or Solicitor of the Court shall have notice of the day on which application for such appointments will be made. And in case the proprietor or proprietors shall not apply for the appointment of Commissioners on or before the second day of the next term after such application to the Court shall become necessary, the Attorney-General or Solicitor of the Circuit shall make application to the Court for such appointment, which may be made without notice to the proprietor or proprietors. (*Ibid*, Sec, 31.)

Work to be Examined by Commissioners.—Duty, if in Dangerous Condition.—The Commissioners of each and every bridge, ferry and turnpike road, shall have full power, in addition to the power hereinbefore given them, and they, or a majority of them, are hereby required to examine the works for which they may be appointed; and in case they shall find the said work, or any part thereof, out of repair or not in good order for travelling or passing, or in any way difficult or dangerous to be travelled or passed, it shall be the duty of the said Commissioners, or a majority of them, to make and publish in the nearest gazette, and

to post up at all the places where tolls or ferriage are received, an order that the proprietor or proprietors shall not receive tolls for travelling over or passing the said bridge, ferry or turnpike road, as the case may be; and after the said order shall be made and posted up as aforesaid, (*whether published in the said gazette or not,*) and until the said order shall be repealed each and every toll gate of the said work shall be kept open, and it shall not be lawful for the proprietor or proprietors thereof to receive any toll or ferriage for travelling or passing over the said work, or any part thereof; and the proprietor or proprietors, keeper or keepers of a ferry, during the continuance of such order respecting it, shall give the same attendance thereon, and convey all persons, horses, cattle and carriages over the same, as if no such order had been made. Whenever any member of said Commission may know, of his own observation, or be informed by the affidavit of any other person, taken before any Trial Justice, or any member of the said Commission, (*who for that purpose are hereby authorized to administer oaths,*) that the said works, or any part thereof, are out of repair, or difficult or dangerous as aforesaid, he shall summon the other members to attend on the work complained of, and thereupon the said Commissioners shall make or reject the said order, as the nature of the case may require; and it shall also be the duty of the said Commissioners, on the written summons of the proprietor or proprietors, to attend and repeal said order, whenever the cause for making the same have been removed. Whenever the said Commissioners may refuse to make or repeal such order, when they ought so to do, they may be compelled thereto by *mandamus*. (*Ibid*, Sec. 32, p. 285.)

Oath to be taken and subscribed by Commissioners.—Each Commissioner of each and every bridge, ferry and turnpike road, before entering on the duties of his office, shall take and subscribe an oath or affirmation to the following effect: "I, A. B., one of the Commissioners of the Bridge, (*Ferry or Turnpike Road, as the case may be,*) do solemnly swear (*or affirm*) that I will, to the best of my judgment and ability, faithfully and impartially discharge the duties required of me by law, as Commissioner aforesaid." (*Ibid.*, Sec. 33.)

2ND.—DUTIES, LIABILITIES OF THE OWNER OR KEEPER.

Duties.—It shall be the duty of every person keeping a ferry to keep in good order the banks of the river or creek at such ferry. (*Ibid*, Sec. 11.)

To provide and keep attached to each end of his ferry flat or flats a good and sufficient apron, or shall keep at each and every landing place a good and sufficient abutment or inclined plane for the same. (*Ibid*, Sec. 12.)

And when it is necessary that slips should be used, shall keep the same in repair at their private expense. (*Ibid*, Sec. 13)

Shall be liable for any unnecessary delay in transporting citizens. (*Ibid*, Sec. 38.)

To keep posted up, in legible letters or characters, in some conspicuous place, their legal rates of toll. (*Ibid*, Sec. 25.)

Liability.—For neglect of any of his duties, the owner or keeper of a ferry is subject to the fines and penalties hereinafter specified, and is also answerable in damages for any case or injury, except they result from the act of God, or the enemies of the State.

Ferrymen are exempt from militia duty. (Gen. Stat., p. 98.)

The owner of a bridge, which may be destroyed by a freshet or otherwise, is authorized to establish a ferry in lieu thereof within one mile of the said bridge, provided the rebuilding or repairing of the said bridge be commenced in six months, and finished within two years from the time of its injury or destruction. (*Ibid*, Sec. 24, p. 283.)

Is required to cause to be erected a good and sufficient railing, extending twenty feet from the ends of all such toll bridges, on each side of the road passing over such toll bridges. (*Ibid*, Sec. 1)

2D.—RATES OF, COLLECTING TOLL, AND OF PERSONS EXEMPT.

Rates of.—The rate receivable at any bridge, ferry or turnpike gate, shall be as follows, unless otherwise expressed in the Act granting or authorizing the charter:

For every carriage with four wheels for the conveyance of persons, (*except stage coaches running regularly on the road,*) drawn by four horses or mules	$1 00
Drawn by three horses or mules	75
" by two horses or mules	50
For every other carriage with four wheels drawn by six horses, oxen or mules, or more	75
Drawn by five horses, oxen or mules, or more	62½
" by four horses, oxen or mules, or more	50
" by three horses, oxen or mules, or more	37½
For every carriage with two wheels, for the conveyance of persons, drawn by two horses or mules, or more	50
For every carriage other than for the conveyance of persons, drawn by four horses or mules	50
" by three horses or mules	37½
For every other carriage	25
For every person on horseback or leading or driving a horse or mule	12½
For every horse or mule in drove	04
For every head of cattle	03
For every hog, sheep or goat	02
For every led horse or mule accompanying a person on horseback	06¼
For every animal for show, in addition to carriage in which conveyed	50
For every foot passenger crossing a bridge	06¼

Collecting Toll.—The tolls demandable and payable at the toll gate of any bridge, ferry or turnpike road, now constructed, or hereafter to be constructed, by authority of the Legislature, shall be paid if required, before passing the gate.

The collector at a gate or ferry shall make change of all coins or bills offered him in payment of toll, under the value of five dollars, except six and a quarter and five cent coins, which shall always be paid to the collector where a less sum is due to him for tolls, unless the exact change shall be tendered him in the copper coin of the United States. (*Ibid*, Sec. 34.)

Collector may Distrain for Toll.—In case the toll is not paid before passing the gate of any turnpike road, bridge or ferry, and shall be refused or neglected to be paid immediately after, the collector may issue distress warrant for the same, and cause it to be levied on the carriage, horse, animal or other thing which has incurred the demand for toll, or any other article or thing conveyed in such carriage, or on such horse, animal or thing, and the thing so distrained shall be disposed of as goods under execution. (*Ibd.*, Sec. 35.)

Persons Exempt from Toll.—Exemption from the payment of toll at every bridge, ferry and turnpike road hereafter chartered, shall be granted to every regularly ordained or licensed minister of the gospel; to every member of the Legislature, going to and from its sittings; and all persons going to and returning from divine service; and to every person traveling in the performance of any civil or military duty, for which he receives no salary or reward; and to every person whose duty it may be made by law to examine the said work, with not more than one servant, a carriage, and two horses. In time of war and insurrection, troops, with their baggage, artillery and munitions of war, exclusively in the service of this State, shall pass every bridge, ferry and turnpike road, at one-half of the established toll or ferriage (*Ibid*, Sec. 36.)

4TH.—FINES AND PENALTIES, AND HOW RECOVERED.

Fine for Neglect.—Any neglect of the duties herein prescribed, or any toll exacted at higher rates than may be allowed by law, shall upon conviction of the parties so neglecting, before any Trial Justice, be punished with a fine of not less than ten or more than fifty dollars.

Disposition of Fine.—Which fine shall be added to the funds for the maintenance of common schools in the County where such ferry or bridge may be situated. (*Ib.*, Sec. 26.)

Persons Fording not to Pay Toll.—If the water at any bridge or ferry should be so low as to enable persons with their horses or cattle to ford the same, the proprietors of the bridge or ferry should not be allowed to take any toll from the person or persons so fording the same. (*Ibid*, Sec. 27.)

Fords not to be Obstructed.—No keeper of any ferry or toll bridge, or other person, shall, on any pretence whatsoever, stop up or obstruct any fording or crossing place, on any river or creek within this State, with a view to compel any person or persons to cross over any ferry or toll bridge, under the penalty of two dollars and fifty cents, to be recovered before a Trial Justice, for every person or persons so prevented from passing over such fording or crossing place. (*Ib.*, Sec. 29.)

Penalty for Compelling Exempts to Pay Toll.—If the owners, keepers or proprietors of any bridges or ferries shall insist on or compel by threats or other means, or receive the payment of toll or ferriage from any person or persons declared to be exempted from the payment of the same, such person or persons guilty of such exaction or reception, shall be subject and liable to forfeiture of not less than ten dollars, for the use of the person or persons illegally paying the same; to be recovered by warrant, under the hand and seal of any Trial Justice in this State, living in the county or counties adjoining said ferry, where such exaction or illegal reception shall or may be made as aforesaid. (*Ibid*, Sec. 29.)

Penalty for Detention, &c.—If any person or persons shall meet with any unnecessary delay at any of the public ferries, toll bridges or causeways established by law, every such person or persons may recover from the persons keeping such ferry, bridge or causeway, for every hour of such unnecessary delay, the sum of ten dollars, to be recovered, on application, from the party aggrieved, by warrant and execution from any neighboring Trial Justice. (*Ibid*, Sec. 38.)

Keepers to Keep Banks in Order.—Every person keeping a ferry, neglecting to keep in good order the banks of the river or creek at such ferry, shall be subject to a fine of three dollars for each and every day of such neglect; the same to be recovered before any Trial Justice having competent jurisdiction. *Ib.*, Sec. 11.)

Aprons to be Attached to Ferry Flats.—Each and every ferry owner or keeper in this State shall provide and keep attached to each end of his ferry flat or flats, a good and sufficient apron, or not having such aprons, shall keep at each and every landing place a good and sufficient abutment or inclined plane for the same; and for default or neglect in so doing, he shall be fined in a sum not exceeding ten dollars for every three days continuance of such default, to be recovered in any Court having competent jurisdiction of the same; one-half thereof to the use of the State, and the other half to the informers. (*Ibid*, Sec. 12.)

Persons not to transport passengers within a mile of an established Ferry.—If any person or persons, living within the space of one mile of any established ferry in any part of this State shall, for any fee, toll or reward, whatever, transport any person, goods or cattle, from one side only to the other of that river where any such established ferry shall be kept, the person taking any such fee, toll or reward, shall forfeit and pay to the proprietor of the ferry next adjacent to the place where such

fare was taken up, treble the value of the fee, toll or reward given, paid or promised, to be recovered by warrant under hand and seal of one Trial Justice, or be imprisoned in the County Jail for a period not exceeding thirty days, any law, usage or custom to the contrary notwithstanding.

Proviso.—*Provided, always*, That in case any passenger shall be detained more than half an hour at any such ferry, then any persons living near such ferries may be at liberty to transport them, anything herein to the contrary notwithstanding. (*Ibd.*, Sec. 14; A. A. 1875, No. 720.)

Penalty for injuring Turnpikes and Bridges.—If any person shall wilfully or maliciously destroy, or in any manner hurt, damage, injure, or obstruct, or shall wilfully and maliciously cause, or aid or assist, or counsel and advise any other person, to destroy, or in any manner to hurt, damage, injure or obstruct any turnpike, road or bridge, now or hereafter to be constructed by the authority of the Legislature, or any causeway, culvert, drain, ditch, wall, embankment, toll-house, or toll-gate, of any such turnpike, road or bridge, the person so offending, on conviction thereof, shall be imprisoned not more than three nor less than one month, and pay a fine not exceeding five hundred dollars, nor less than twenty dollars, at the discretion of the Court before which such conviction shall take place, and shall be further liable to pay all expenses of replacing the same. (*Ibd.*, Sec. 18).

Penalty for driving other than on right of centre.—Any person who shall lead, drive, or having charge thereof, shall permit any carriage, animal or other thing to travel over any turnpike road, causeway or bridge, other than on the right of the centre thereof, shall, on conviction thereof, before any Court of competent jurisdiction, pay a fine not exceeding ten, nor less than two dollars, and be further liable for the damage occasioned thereby. (*Ibd.*, Sec. 20.)

Obstructing, penalty for.—The same penalty is affixed to the offense of obstructing, or causing to be obstructed any turnpike road, causeway or bridge, now constructed or hereafter to be constructed by the authority of the Legislature, or obstructing or filling up any ditch, drain or culvert, made for the purpose of conveying away water from any such turnpike road, &c., and not removing such obstruction when required to do so. (*Ibd.*, Sec. 19).

No fire to be carried on bridge.—No person shall carry over, or otherwise have or place any fire on any wooden bridge, or bridge, the superstruction whereof is of wood, constructed by the authority of the Legislature; and on conviction shall pay as above. (*Ibd.*, Sec. 3).

Crossing faster than a walk.—For crossing such bridge more than ten feet long, in a gait faster than a walk; every person so offending shall, on conviction thereof, before any Trial Justice of the County, pay a fine not exceeding ten dollars, nor less than five dollars, and shall be further liable for all damages occasioned by such offense. (*Ibd.* Sec. 2).

No wooden building to be erected within fifty feet of a bridge.—No person shall erect or cause to be erected, any wooden building or other edifice not constructed of stone or brick, and not roofed with tin or slate, so as not to be fire-proof, within fifty feet of the wooden part of any bridge which is more than fifty feet long, constructed by authority of the Legislature; and if any person shall attempt such building or edifice, he may be prohibited from proceeding therein by any competent Court; or if the same shall have been erected contrary to the Section, the said Court may order the same to be taken down and removed and it shall be lawful for the proprietor or proprietors of the bridge, their officers or agents, to execute such order, under the direction of the Sheriff of the County, or his lawful deputy. (*Ibd* Sec. 4.)

Vessels passing under bridge to drop anchor, &c.—All vessels, boats and rafts, passing under any bridge, shall, before they come to the same, drop anchor and drag through under the same; and if any vessel, boat or raft shall pass, or attempt to pass under any bridge without dragging as aforesaid, every such vessel, boat or raft, shall forfeit the the sum of fifty dollars, to be recovered by immediate seizure and detention of the said vessel, boat or raft, until the payment of the said sum, by information being given to the Circuit Court, in the County where the offense was committed; the money when so recovered, to be applied to rebuilding or keeping in repair such bridge. (*Ibd.* Sec. 5.)

Penalty—Penalties recovered, how to be applied.—All the penalties which may be recovered for offenses against owners of bridges or turnpikes, shall be paid one-half to the informer and the other half to the corporation or individual or individuals owning the works respecting which the said offenses shall have been committed. (*Ibd.*, Sec. 22.)

FIELDS.

Burning grass whereby fields are set on fire, a Misdemeanor.

(*See Burning*)

FILING.

(Transcript of Judgment, Effect of.)

(*See Courts of Trial Justices*)

FINDING.

(*See Coroner.—Verdict of Jury of Inquest.*)

FINES.

To be turned over to County Treasurer, collected by Trial Justices. All fines and penalties collected by Trial Justices in criminal cases shall be forthwith turned over by them to the County Treasurer of their respective Counties, for County purposes; *provided*, when by law, any person or persons are entitled, as informer or informers, to any portion of the fine or penalty imposed and collected, the same shall be immediately paid over to him or them. (Gen Stat., 203,)

By Clerks of Court.—All fines and penalties imposed and collected by the Circuit Court of General Sessions and criminal causes, shall be forthwith turned over by the Clerk of said Court to the County Treasurer of the County wherein the same were imposed; *Provided*, that when, by law, person or persons entitled, as informer or informers, to any portion of the fine or penalty imposed and collected, the same shall be immediately paid over to him or them. They shall also pay annually to the County Treasurers of their respective Counties, for the use of the State, all such monies as may have come into their hands as taxes from persons representing, publicly, plays and shows within the limits of their said Counties (Rev. Stat., C. XXII, Sec. 38, p. 184)

Failure to Pay Over Fines—How Punished.—If any Clerk of the Circuit Court of General Sessions, County Sheriff or Trial Justice, shall neglect or, refuse to immediately pay over as required, any and all fines and penalties collected by them in any criminal cause or proceeding, he shall, on conviction thereof, be subject to a fine of not less than one hundred, nor more than one thousand dollars, and imprisonment not less than three, nor more than six months, and shall be dismissed from office, and disqualified from holding any office of trust and profit under this State. (Gen. Stat., c. CXXXI., Sec. 8, p. 725.)

Under Quarantine Laws—How Recovered.—All fines and forfeitures and penalties provided by the laws of the State, for the violation of the quarantine laws, or disobedience of the orders of the Governor establishing quarantine regulations, shall be recovered by indictment in the Court of Sessions; and all persons offending against the same, upon conviction, shall be liable to imprisonment not exceeding twelve months, in addition to such fines, forfeitures and penalties. (*Ibid*, c. XXXIII., Sec. 39, p. 237.)

In every case where any recognizance shall be adjudged forfeited, or where any fine shall be imposed by, or recovered for, the use of the State in any Court, or before a Trial Justice, if the party incurring such fine or forfeiture, shall fail to pay down the same, with the costs of prosecution, then a writ, in the nature of an execution, shall issue, by virtue of which the Sheriff, or his deputy, shall sell (*in the same manner as property is sold under execution in civil cases,*) so much of the offender's

estate, real or personal, as may be necessary to satisfy the fine or forfeiture, also the costs of prosecution, and also the reasonable charges of taking, keeping, and selling such property, returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, with costs and charges, if he requires it. (*Ibid*, c. CXLIII., Sec. 9, p. 751.)

If the Sheriff or his deputy, return, on oath, that such offender refused to pay, or has not any property, not sufficient whereon to levy, then a writ of *capias ad satisfaciendum* shall issue, whereby he may be committed to the common jail until the forfeiture, costs and charges shall be satisfied, entitled, however, to the privilege of insolvent debtors. (*Ibid*, Sec. 10)

FINE-HUNTING.

(*See Hunting.*)

FISH.

1st —Fish Commissioner and his Duty.
2d.—Penalty for Capture and Destruction of Fish at Certain Seasons—Obstructing Fresh Water Streams, &c.

1st.—OF THE FISH COMMISSIONER AND HIS DUTY.

By A. A., 1878, No. 600, the Governor is authorized to appoint a suitable person to act as Fish Commissioner of this State, who is to receive no compensation for his services, and whose duty shall be to introduce from other States and places, into the waters and rivers of this State, such fishes as he may think best for the interest of the State; also to make and use such means or modes as he may think best for the propagating the native fishes of this State; *provided*, the expenses and expenditures shall, in no event, exceed the sum of eight hundred dollars, the amount authorized to be appropriated.

The said Commissioner is to be paid his necessary and travelling expenses while acting as Fish Commissioner, and be required to make to the Governor of the State, on or before the 1st November of each year, a full report of all his operations, showing how many and what kind of fishes have been put in the waters of the State, and designating the streams or bodies of water into which the same have been introduced, with such general recommendations as he may think proper He is also required to file with his annual report, a statement, under oath, of his account of expenses and expenditures.

2D.—PENALTY FOR CAPTURE AND DESTRUCTION OF, &C.

Fishing with Nets, &c., Prohibited.—Any person in the Counties of Horry, Marion, Darlington, Clarendon, Chesterfield, Georgetown, Marlboro, and Williamsburg, who shall fish with nets or gigs, or set traps, or shoot fish with any kind of gun, in any of the fresh water rivers, creeks, lakes or other streams in said Counties, between the first day of May and the first day of September in any year; and in the Counties of Richland and Chester between the fifteenth day of April and the first day of September in any year, shall be deemed guilty of a misdemeanor.

Penalty.—And upon conviction thereof by a Court of competent jurisdiction, shall be fined in a sum of twenty dollars, or imprisonment in the County Jail for a period of thirty days. (A. A., 1878, No. 602; A. A., 1878, No. 590; A. A., 1878, No. 373.)

To be a Close Time.—Fines.—There shall be a close time in all the creeks, streams and inland waters of this State from the setting of the sun each Thursday until the rising of the sun on Tuesday, during which time all seines, nets or any plan or device for the stoppage or collection of fish which obstructs any portion of any creek, stream or inland waters, other than a dam for manufacturing purposes, shall be removed from said creeks, streams or waters; and the owner in whole or in part of any such obstruction, plan or device during the period aforesaid, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any Court of competent jurisdiction, shall be fined in the sum of two hundred dollars, one-half of which shall go to the informer and the other half to the County in which the case shall be tried, or imprisoned for a period of not less than three nor more than six months, or both, at the discretion of the Court trying the case. (16 Stat., 539.)

Fish-Ways to be Constructed.—All manufacturing companies or persons who have erected, or may erect, artificial dams across the inland creeks, streams of waters of this State, which prevent the migratory fish from ascending the same, shall construct proper fish-ways over the same; and should such manufacturing companies or persons refuse or fail so to do, they shall be liable to a fine of five thousand dollars, recoverable by the County in which such has been or may be erected, in a Court of competent jurisdiction. (Gen. Stat., C. LXXVII, Sec. 2, p. 400.)

Casting Impurities into Fish Streams.—Should any person or persons cause to flow into, or be cast into, any of the creeks, streams or inland waters of this State, any impurities that are poisonous to fish or destructive to their spawn, such person or persons shall, upon conviction thereof, be punishable with a fine of not less than five hundred dollars, or imprisonment of not less than six months in the County Jail; the fine to go one-half to the informer, and the other half to the County. (*Ibid*, Sec. 3.)

No Traps to be kept near the Dam on any Navigable Stream.—It shall not be lawful for any person whomsoever, at any time, to erect or keep any fish trap or other device for catching fish, or to fish with any net or seine, within eighty yards of any dam erected by the order or at the expense of the State across any stream intended thereby to be made navigable, in which dams there shall be left or constructed any sluice for the passage of fish; and all and every person or persons offending shall, for each and every offense, pay the sum of twelve dollars, to be recovered before the Court of General Sessions of the County where the offense may have been committed, one-half of which penalty shall go to the informer, and the other half to the support of the work to which the dam is attached; and all dams and other devices for catching fish, erected or kept up in vio'ation of this section, are hereby declared public nuisances, and may be abated as such. (*Ibid*, Sec. 7.)

Obstructing Navigation by Fish Trap.—If any person shall keep, put, or cause to be kept, put, or placed by him, her or them, any fish trap, in or near any boat sluice, in any of the rivers within this State, so as thereby to injure or in the least obstruct the free navigation of said rivers, every such person or persons so offending shall forfeit, for each and every such offense, the sum of one hundred dollars, for the use of the State. (*Ibid*, Sec. 8.)

Stealing from Fish Trap.—Penalty.—Any person who shall take and carry away from any fish trap in the waters of this State any fish caught and being in said trap, with intent to defraud and deprive the owner or owners of said trap of the said fish, shall be guilty of a misdemeanor, and, on conviction thereof by indictment, shall be punished for said offense by fine not exceeding two hundred dollars, and imprisonment not exceeding six months. (*Ibid*, Sec. 9.)

FIXTURES.

(*See Misdemeanor.*)

The larceny of fixtures below the value of twenty dollars shall be a misdemeanor, and considered petit larceny. (Gen, Stat., C. CXXIX, Sec. 12, p. 716.)

The wilful, unlawful and malicious cutting, mutilating, defacing or otherwise injuring the fences or fixtures of another is a misdemeanor, punishable by fine and imprisonment at the discretion of the Court before which the case is tried. (*Ibid*, Sec. 20, p 718.)

FORCIBLE ENTRY AND DETAINER.

1st.—What is a Forcible Entry.
2d.—What is a Forcible Detainer.
3d.—General Provisions Relative to.
4th.—Punishable Criminally, by Indictment at the General Sessions.
5th.—Civil Process for Restitution.
6th.—Forms.

1st.—WHAT IS A FORCIBLE ENTRY.

A forcible entry is where an entry is made into lands and tenements, benefices of Holy Church or other possessions, where no entry is given by law, or where an entry may be lawful, and the party enters with strong hand, with unusual weapons, or an unusual number of servants, or multitude of people.

By Violent Threats.—An entry may be forcible, not only in respect of violence done to the person of a man, but also in respect of any other kind of violence in the manner of entry. As by the breaking open the doors of a house, whether any person be in it or not; and though a man enter peaceably, yet, if he turn the party in possession out by violence or threats, this also amounts to a forcible entry, but not if he merely threaten to spoil the party's goods, or destroy his cattle, or do any injury which is not of a personal nature.

Continuing in Possession.—Also, persons continuing in possession of a defeasable estate after the title is defeated, are punishable for a forcible entry; for continuing in possession afterwards, amounts in law to a new entry. (1 Tomlin's, 810.)

May be of a Rent.—This offense may be committed of a rent, as well as of a house and land, as where one comes to distrain, and the tenant by force or threats, makes resistance. (2 Shep., 210,)

Not of an Easement.—But forcible entry cannot be made of an easement, or of a common, or office.

Not of One's own House.—So no man can be guilty of a forcible entry for entering into lands or houses in his own sole possession at the time of entry; as by breaking open doors of his house, detained from him by one who has the bare custody; but joint tenants, or tenants in common, may be guilty of forcible entry in holding out their companions. (1 Hawk., P. C.)

Surreptitiously.—If an entry be surreptitiously obtained, yet if it be continued by force, it will be regarded as forcible, and whenever an unlawful entry of one, necessarily dispossess the other, it will be a forcible entry. (State *vs.* Bart., 2 Tread., 489.)

Who may Commit.—A forcible entry may be committed by a single person, as well as by twenty, and all who accompany one who makes a forcible entry, shall be adjudged to enter with him, whether they come upon the lands or not. And an infant or *feme covert* may be guilty of this offense, in respect of violence committed by them in person but not for what is done by others at their command their commands being void (1 Tomlin's, 810.)

2D.—WHAT IS A FORCIBLE DETAINER.

A forcible detainer is where a man, who enters forcibly or peaceably, though unlawfully, afterwards retains possession by force or threats, and the detainer may be forcible, whether the entry be forcible or not. (1 Hawk. P. C., C. 64.)

If a person, after peaceable entry, shall make use of arms to defend his possession, it will be a forcible detainer.

If I hear that persons will come to my house to beat me, and I take in force to defend myself, this is not a forcible detainer; but where they are coming to take lawful possession, it is otherwise.

If one House be Used to Detain Another.—If a man have two houses next adjoining, the one by a defeasable title, and the other by a good title, and he uses force in that he hath by a good title to keep persons out of the other house, this is a forcible detainer. (2 Shep. Ab , 203.)

Tenant Holding Over.—When a tenant keeps possession of the land at the end of his term against his landlord, it is a forcible detainer. And if a lessee takes a new lease of another person whom he conceives to have a better title, and at the end of his term keeps possession against his landlord, it is a forcible detainer. (Cro. Jac., 199.)

A person is not guilty of a forcible detainer by merely refusing to go out of a house, and continuing therein in despite of another. (1 Hawk., C. 64.)

Tenant at Will.—If A. be a tenant at will of B., and B. enters and commands A. to quit possession, and he denies it, this is no forcible detainer, unless some act of violence be used. (1 Shaw's Justice, 453.)

3D.—GENERAL PROVISIONS RELATIVE TO.

Entry to be made Lawfully and Peaceably.—No person shall make any entry into any lands and tenements, but in case entry is given by law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner. (Gen. Stat., C. CXV, Sec. 1, p. 534.)

Feoffments, etc., void.—If any person, after such entry into lands or tenements holden with force, make a feoffment or other discontinuance to any person, to have maintenance or to take away and defraud the possessor of his recovery in any wise, and afterwards in an action thereof to be taken or pursued before Trial Justices, by due inquiry thereof, such

feoffments and discontinuances are duly proved to be made for maintenance as aforesaid, then such feoffments or other discontinuances shall be void, frustrate and of none effect. (*Ibid*, Sec. 4.)

Person Wrongfully Disseizing.—If any person be put out or disseized of any lands or tenements in forcible manner, or put out peaceably, and be afterwards holden out with strong hand; or after such entry any feoffment or discontinuance in anywise thereof be made to defraud and take away the right of the possessor, the party grieved in this behalf shall have an action against such disseizor. *Ibid*, Sec. 5.)

In case of Recovery Plaintiff to have treble Damages.—If the party grieved recover in such action and it be found by verdict or in other manner by due form of law that the party defendant entered by force into the lands and tenements, or after his entry did hold them with force the plaintiff shall recover treble damages against the defendant.—(*Ibid*, Sec. 6.)

Not to affect Tenants who hold by force for three years.—They which keep their possessions with force in any lands and tenements whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued their possession in the same by three years or more, shall not be endangered by force of the above provisions. (*Ibid*, Sec. 9.)

4TH.—PUNISHABLE CRIMINALLY BY INDICTMENT AT THE GENERAL SESSIONS.

By Indictment.—The party grieved may be aided and have the assistance of the Justices at the General Sessions by way of indictment, which being found there, he shall be restored to his possession by a writ of restitution granted out of the same Court to the Sheriff (Dalt., c 129.)

No restitution is to be made where there is no forcible putting out or holding out of possession, and found by a Jury. (1 Shaw's Justice, 444.)

And the tenement in which the force was made must be described with convenient certainty, and must set forth that the defendant actually entered and ousted the party grieved, and continueth his possession at the time of finding the indictment, otherwise he cannot have restitution, because it doth not appear that he needeth it. (1 Hawk· 147, 149, 150.

Expulsion and disseizure must be expressly al'eged in inquisitions and indictments on forcible entries, but tenants at will are not within the Statutes. (Popham, 205; F. N. B., 248; Sed., 102; 1 Mod, 73; 2 Keble, 707; Holme's Case.)

Tenant at will hath no certain indefeasable estate, nothing that can be assigned by him to any other, because the lessor may determine his will and put him out whenever he pleases, for the lessee only holds at the will of the lessor. (2 Black. Com., 145.)

If a man's wife, children or servant's do continue in the house, or upon the land, he is not ousted of his possession, but his cattle being upon the ground do not preserve his possession. (Dalt., c. 132)

An indictment for forcible entry was quashed for not setting forth that the party was seized or disseized, or what estate he had in the tenement, for if he had only a term for years, then the entry must be laid into the freehold of A., in the possession of B. (3 Salk., 169.)

If the Statutes were mis-recited in the indictment it will be quashed. (Croke, Eliz., 93, 96, 106, 107, 697 ; 1 Bulstrode, 218.)

The indictment was for forcible entry into a copyhold, viz: that the defendant *ejecit et disseisivit*, for which reason it was quashed, because desseizin is applicable only to freehold, and therefore in all cases except for a freehold, it ought to be *ejecit, expulit et amovit.* (Raym, 67 ; 4 Inst., 176.)

If a forcible entry and detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no inquiry hath before been made of the force. (Dalt,, c. 44)

5TH.—CIVIL PROCESS FOR RESTITUTION.

Two Trial Justices to have Jurisdiction.—Any two Trial Justices of the County wherein such lands and tenements may be situated shall have authority and power to enquire by the people of the same County as well of them that make forcible entries in lands and tenements as of them which hold the same with force. If it be found before any of them that any do contrary to this chapter, then the said Trial Justices shall cause to be re-seized the lands and tenements so entered or holden as aforesaid, and shall put the party so put out in full possession of the same lands and tenements as of them which held the same with force. (Gen. Stat., c. C. X. V., Secs. 2 and 3.)

Proceedings—The forms and proceedings before Trial Justices, in cases of forcible entry and detainer, shall be the same as are prescribed by law in cases where tenants hold over after the expiration of their lease. (*Ibid*, Sec. 7.)

Any two Trial Justices of the County in which the lands and tenements may be situated, are authorized and required on complaint made, to place the names of twenty-four neighboring persons qualified by law to act as jurors in a box, and from them draw the names of eighteen, and shall thereupon issue their warrant, in the nature of a summons, directed to the Sheriff or any Constable of the County, commanding such officer to summon the said eighteen jurors to attend at a certain time, within four days, and at a place appointed, and from the said eighteen jurors so summoned, twelve shall be drawn in the same manner, who shall be empanelled to try the facts. Provided that if from the said eighteen so summoned, the number of twelve cannot, from any cause, be had, (the Trial Justices are authorized to complete the number

from the remainder originally selected. The said Trial Justices shall also summon the party charged, in the same way and at the same time, likewise to appear before them, to show cause, if any, why possession of the said premises should not be restored to the complainant; and if, upon hearing the case, the jury shall be satisfied that the complainant is entitled to the possession of the premises in question, they shall so find, whereof the Justices shall make a record, and shall thereupon issue their warrant, directed to the Sheriff of the County wherein the lands are situated, commanding him forthwith to deliver to the complainant, his heirs or assigns, full possession of the premises, and to levy all expenses incurred of the goods and chattels of the defendant, or the person in possession as aforesaid. (Act. 1874, No 431. p. 525. Gen. Stat. C. XXV., Sec. 25, p. 198, 199)

Restitution on Estates for Years.—Any two Trial Justices authorized and enabled, upon inquiry, to give restitution of possession unto tenants of any estate of freehold of their lands or tenements which shall be entered upon with force, or from them withholden by force, shall have the like and the same authority and ability, (upon indictment of such forcible entries or forcible withholding before them duly found), to give like restitution of possession unto tenants for term of years, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force. (*Ibid*, C. CXV., Sec. 8.)

6TH.—FORMS.

FORM NO. 128.—RECORD OF A FORCIBLE DETAINER.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——— }

Be it remembered, that on the ——— day of ——— in the year ——— at ——— in the County aforesaid, C. D., complained to me A. B., Trial Justice in and for the said County of the said State, that E. F. of ———, unto the messuage of him, the said C. D., situated within the County aforesaid, did enter, and him, the said C. D., of the messuage aforesaid, unlawfully ejected, expelled and removed, and the said messuage from him, the said C. D., unlawfully, with strong hand, and armed power, doth yet hold, and from him detain, against the form of the Statute in such case made and provided; whereupon the said C. D., then, to wit, on the ——— day of ——— aforesaid, required and prayed of me the remedy provided by the Statute, which complaint and prayer by me being heard, I personally went to the said messuage, and did then and there find and see the aforesaid E. F., the aforesaid messuage, with force and arms unlawfully, with strong hand and armed power detaining, against the form of the Statute in such case made and provided; whereupon the said E. F. was arrested, and sent to the common jail of ———

by virtue of a *mittimus* duly issued by me for that purpose, concerning which the premises aforesaid, I do make this my record.

In witness whereof, I do hereunto set my hand and seal the ——— day of ——— 18 ——.

A. B, [L. S.]
Trial Justice.

FORM NO. 129.—COMMITMENT FOR FORCIBLE DETAINER.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——

By A. B., Trial Justice in and for the said County in the said State:

To the Keeper of the Common Jail of said County:

Whereas, upon complaint made unto me by C. D., of ——— the said County, I did this present day go to the dwelling-house of the said C. D. aforesaid, and there did find E. F., of ——— forcibly, with strong hand, and armed power, holding the said house against the peace of this State, and against the form of the Statute in that behalf made and provided; therefore I send you by the bringers hereof, the body of E F., convicted of the said forcible holding, by my own view, testimony and record, commanding you to receive him unto your said jail, and there safely to keep him till he shall thence be delivered by due course of law.

Herein fail not at your peril.

Given under my hand and seal, this —— day of ———, 18—.

A. B., [L. S.]
Trial Justice.

FORM NO. 130.—ARREST WARRANT AND AFFIDAVIT FOR FORCIBLE DETAINER.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

By A. B., Trial Justice, in and for the said County in the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at ——— in the County and State aforesaid, on the —— day of ———, 18—, one E. F., (*here set forth the facts in Affidavit below.*)

These are therefore to command you to apprehend the said E. F., and bring him before me to be dealt with according to law

Given under my hand and seal this —— day of ——, 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA, }
County of ———. }

Personally appeared before me A. B., a Trial Justice of the said County of the said State, C. D., who being duly sworn says: That he was in quiet and peaceable possession of a dwelling house, (or field, or other possession,) situate (*describe its situation as correctly as possible,*) which deponent held as tenant unto E. C., for a term of years, (*or in his own right, and here set forth what estate,*) yet unexpired, and that on the —— day of ———; 18—, E. F., and (*here insert all who were present aiding and abetting,*) did, with force, threats, and violence, enter and take possession of the said premises, and by force have ever since kept, and do still keep possession of the same. (*If they have departed, then state only the forcible entry, or if the entry be peaceable, and the parties detained by force, set forth the facts as they exist, as indictment will be either for a forcible entry or for a detainer.*)

C. D.

Sworn to before me, this —— day of —— 18—.

A. B.,
Trial Justice.

If the affidavit set forth a case requiring restitution, the Trial Justice shall call to his aid another, and the proceedings will conform to subdivision 5, (*Proceedings for Restitution,*) of which observe the forms following.

Form No. 131.—Warrant of Two Trial Justices for Jurors.

THE STATE OF SOUTH CAROLINA, }
County of ———. }

By A. B., and C. B., Trial Justices, in and for the said County of the said State:

To any lawful Constable, (as to M. N., Sheriff of said County):

You are hereby commanded to summon the jurors whose names are on the panels hereto annexed, to be and appear before us, at ———, on the —— day of ——, (within four days,) at — o'clock, to enquire upon their oaths of and concerning a certain entry and detainer, forcibly done in a certain (house or other possession,) situated ———, in the peaceable and quiet possession of C. D., against the form of the Statute, &c. And you are further commanded to summon E. F. &c., who are charged with such forcible entry and detainer, to be and appear before

us, at the same time and place, to show cause, if any, why restitution of the said premises should not be made to the said C. D.

Hereof fail not on pain of the penalties that will fall thereon.

Given under our hands and seals this —— day of ——, A. D. 18—.

A. B., [L. S.]
Trial Justice.
C B., [L. S.]
Trial Justice.

FORM NO. 132.—THE JURORS' OATH.

To the Foreman:

"You, as Foreman of this inquest, shall true inquiry and presentment make, of all such matters as may come before you, in the case now pending, for a forcible entry and detainer. You shall spare no one for favor or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given you: So help you God."

To the others of the Jury:

The oath that your Foreman hath taken, on his part, you and each of you shall duly observe and keep on your parts: So help you God.

FORM NO. 133.—THE INQUISITION OR FINDING OF THE JURY.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——. }

An inquisition taken for and in behalf of the State of South Carolina, at ——, in the said State, on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, by the oaths of (*here insert the names of the jurors,*) good and lawful men of the County and State aforesaid, before (*name of Trial Justices,*) two of the Trial Justices in and for the said County and State.

We find that C. D. was lawfully and peaceably possessed of a certain (*here insert the premises whether house, field, or other possession,*) situated in the County aforesaid, (*here describe the situation as correctly as possible, and as accurately,*) of an estate (*here state what estate the prosecutor has, whether an estate for a year or years, for life, or in fee simple.*)

That on the —— day of ——, inst., (*here name the parties who took possession,*) with strong hand and with force and arms, entered into the said premises, and expelled, ejected and removed the said C. D. thereof, and him so expelled, ejected and removed of the said premises, until the day of the taking of inquisition, and the same, with main force and power, withheld, and now do withhold, against the force of the Statute, in such cases made and provided, and against the peace and dignity of the said State. (*This inquisition must be signed by all the jury.*)

FORM NO. 134.—WARRANT OF RESTITUTION.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

By A. B. and C. B., two Trial Justices of the said County in the said State.

To M. N., Sheriff of —— County, (or to any lawful Constable):

Whereas, by an inquisition had at ———, in the State aforesaid, on the —— day of ———, instant, by the oaths of (*here insert the names of the Jurors, constituting the jury,*) good and lawful men of the said County and State, before us, A. B. and C. B, two of the Trial Justices in and for the said County of the said State, it was found by the said jury, that C. D., was lawfully and peaceably in possession of a certain ———, situated in the County aforesaid, (*describe particularly the situation,*) of an estate, (*set forth the estate according to the finding,*) and that E. F., &c., did forcibly enter the said premises, and dispossess the said C. D., and doth still forcibly detain the same.

These are, therefore, to command you, forthwith, to eject the said E. F., &c., from the said premises, and to deliver to the said C. D., his heirs and assigns, full possession of the same. You are also commanded, that of the goods and chattels of the said E. F., &c., you levy the sum of —— dollars, for the expenses incurred in the said proceedings; and of your manner of executing this warrant, you shall make return to us within ten days from this date.

Herein fail not under the penalties that will fall thereon.

Given under our hands and seals this —— day of ———, one thousand eight hundred and ——.

A. B., [L. S.]
Trial Justice.
C. B., [L. S.]
Trial Justice.

FORESTALLING, ENGROSSING AND REGRATING.

Are offenses generally classed together, as of the same nature, and equally hurtful to the public. The English Statutes against these offenses have been repealed, the remedy having been found worse than the disease, and the Act of 1739, of this State, was permitted to expire, so that they remain as offenses only indictable at common law.

Definition.—Forestalling is the buying, or bargaining for any corn, cattle, or other merchandize by the way, as they come to the fairs or markets, to be sold, before they are brought thither to the intent to sell them again at a higher or dearer price.

Engrossing.—Engrossing is the getting into one's possession, or the buying up all of any commodity in market, with intent to sell it at an unreasonable price, and is an indictable offense, and fineable at common law.

Regrating.—Regrating is the buying of corn or other dead victual in any market, and selling it again in the same market.

The proceedings against a party for either of the above offenses should set forth the article bought and the quantity. (Tomlin's, 831.)

FORGERY.

Definition.—Forgery at common law has been held to be "the fraudulent making and alteration of a writing to the prejudice of another man's right." (4 Bl. Com , 247.)

By a more modern writer it is defined, as "a false making; a making *malo animo*, of any written instrument, for the purpose of fraud and deceit." (2 East. P. C , 852.)

The offense at common law is of the degree of a misdemeanor. (2 Russell, 1,437.)

The subject may be considered:

1st.—The Making or Alteration Requisite to Constitute a Forgery.

2d.—The Written Instrument in Respect of which Forgery may be Committed.

3d.—The Fraud and Deceit to the Prejudice of another Man's Right.

4th.—Statutory Provisions Relative to, Under the Laws of the State and of the United States.

5th.—Punishment.

6th.—Forms.

1st.—THE MAKING OR ALTERATION REQUISITE TO CONSTITUTE A FORGERY.

Fraudulent Alteration, &c.—The making of a whole written instrument in the name of another, with a fraudulent intent, is undoubtedly a sufficient making; but a fraudulent insertion, alteration, or erasure, even of a letter, in any material part of the instrument, whereby a new operation is given to it, will amount to forgery; and this, although it be afterwards executed by a person ignorant of the deceit. (2 East. P. C., 855)

The fraudulent application of a true signature to a false instrument for which it was not intended, or *vice versa*, will also be a forgery. For ex-

ample, it is forgery in an individual who is requested to draw a will for a sick person in a particular way, instead of doing so, to insert legacies of his own head, and then procuring the signature of such sick person to be affixed to the paper, without revealing to him the legacies thus fraudulently inserted. (1 Hawk., C. 70, S. 2; 2 Russ. on Cr. 318.)

Additional Words Fraudulently Added.—It has been intimated by Lord Ellenborough, that a party who makes a copy of a receipt, and adds to such copy material words not in the original, and then offers it in evidence on the ground that the original had been lost, may be prosecuted for forgery. (5 Esp. R., 100.)

Assuming Name and Character of a Person not in Evidence is not a Forgery.—It is a sufficient making where, in the writing, the party assumes the name of a character of a person not in existence. (2 Russ., 327.)

But the adoption of a false *description* and *addition*, where a false name is not assumed, and there is no person answering the description, is not a forgery. (Russ. & Ry., 405.)

In a Fictitious Name a Forgery.—Making an instrument in a fictitious name, or the name of a non-existing person, is equally a forgery, as making it in the name of an existing person; (2 East. P. C., 957; 2 Russ. on Cr., 328;) and although a man may make the instrument in his own name, if he represent it as the instrument of another of the same name, when in fact there is no such person, it will be forgery in the name of a non-existing person. (2 Leach, 775; 2 East. P. C., 963.)

Omission, when may be a Forgery.—Though, in general, a party cannot be guility of forgery by a mere *non feasance*, yet, if in drawing a will, he should fraudulently omit a legacy, which he had been directed to insert, and by the omission of such bequest, it would cause a material alteration in the limitation of a bequest to another; as, where the omission of a devise of an estate for life to one, causes a devise of the same lands to another to pass a present estate, which would otherwise have passed a remainder only, it would be a forgery. (1 Hawk., C. 70, S. 6; 2 Russ. on Cr., 320)

The offense of forgery may be complete without a publication of the forged instrument. (3 Chit. Cr. L., 1,038.)

2ND.—THE WRITTEN INSTRUMENT IN RESPECT OF WHICH FORGERY MAY BE COMMITTED.

Records.—With regard to the thing forged, it may be observed that it has been holden to be forgery at common law, fraudulently to falsify or falsely make records and other matters of a public nature. (1 Roll's Ab. 65, 68; A Parish Register; 1 Hawk, c. 70; A letter in the name of a Magistrate, the Governor of a Goal, directing the discharge of a prisoner. (6 Car. and P., 129; S. C. 25 Eng. C. L. R., 315.)

Private Writings.—With regard to private writings it is forgery fraudulently to falsify or falsely to make a deed or will. 1 Hawk. b. I.

C., 70, S. 10; or any private document whereby another person may be prejudiced. (2 Russ. on Cr. b. 4, c. 32, S. 2; 3 Chit. Cr., L. 1022 to 1038.)

3d.—THE FRAUD AND DECEIT TO THE PREJUDICE OF ANOTHER MAN'S RIGHT.

Need be no Actual Injury.—The intention to defraud and deceive constitutes the chief ingredient of this offense of forgery; yet it is immaterial whether any person be actually defrauded, provided he may have been prejudiced by the act done. (1 Hawk. P. C., c. 70, S. 11.)

General Intent Sufficient.—But although to constitute forgery there must be an intent to defraud, still there need not be an intent to defraud any particular person, but a general intent to defraud is sufficient, and if a person do an act the probable consequences of which is to defraud, it will in contemplation of law, constitute a fraudulent intent. (2 Russel, 353.)

Writing Another Man's Name by Command.—The intention to defraud being necessary to constitute forgery, he is not guilty of this offense who writes another man's name to a deed in his presence and by his command. (*Ib.*, 355).

4th.—STATUTORY PROVISIONS RELATIVE TO, UNDER THE LAWS OF THIS STATE AND OF THE UNITED STATES.

(1.) Under the Laws of this State, and

(2.) Of the United States.

(1.) Of This State.

The falsely making, or causing to be made, or the uttering and publishing of which, knowing it to be falsely made, of any writing or instrument of writing, the issuing, uttering or publishing of any printed or engraved paper bearing a resemblance to a bank note, and the falsely making, altering, changing, defacing or erasing, or causing or procuring to be so done, or willingly assisting in the premises with intent to defraud any person, is forgery. (Gen. Stat., c, CXXX., p. 722.)

(2.) Of the United States.

The written instruments which may be the subject of forgery under the Acts of Congress, are judgments, certificates, or other public security. (1 S. L. U. S., 86.)

Any deed, power of attorney, order, certificate, receipt, or other writing, for the purpose of obtaining from the United States or any of their officers or agents, any sum of money. (3d S. L. U S., 1917.)

Any paper, writing, or instrument in imitation of, or purporting to be an indenture, certificate of the public stock, or debt, treasury note, or

other public security of the United States, or any letters patent of the United States, or any bill, check or draft for money drawn by or on any treasurer or other officer, or agent of the United States; or any paper, writing or instrument purporting to be or in imitation of any letter of attorney or other authority, to assign or sell any share in the public stock or debt of the United States; or any instrument in imitation of or purporting to be an official copy of the enrollment of any vessel, or a license to any vessel, or a certificate of ownership, passport, sea-letter or clearance, or a permit, debenture, or other official document granted by a collector or other officer of the customs, by virtue of his or their office, 3 S. L., N. S., 2003; certificates of citizenship, 2 S. L., N. S., 1304; and consular certificates, 3d S. L., N. S., 1889.

5TH.—PUNISHMENT.

The punishment for forgery is by imprisonment for not less than one year, nor more than seven years, and also to pay such fine as may be judged expedient, at the discretion of the Judge who may try the case. (Gen. Stat., C. 130, p. 722.)

6TH.—FORMS.

FORM NO. 135.—ARREST WARRANT AND AFFIDAVIT FOR FORGERY.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.

By A. B., Trial Justice in and for the said County in the said State.

To any Lawful Constable:

Whereas, complaint on oath has been made unto me by C. D., that at ——, in the County and State aforesaid, on the —— day of ——, A. D. 18—, one E. F. did falsely make and forge (*state what*), forging the name of G. H. and pass the same upon (*or offer*) him, the said C. D.

These are, therefore, to command you to apprehend the said defendant, E. F., and bring him before me, to be dealt with according to law.

Given under my hand and seal, the —— day of ——, A. D. 18—.

A. B., [L.S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.

Personally appeared before me A. B., a Trial Justice of the said County and State, C. D., who being duly sworn, says: That at ——, in the County and State aforesaid, on the —— day of ——, A. D. 18—, one (*here continue according to the facts of the particular case, stating the*

names of all the parties in full; the name of the person altering or uttering, of the person whose name is forged, and the person to whom the forged instrument was offered or given. Also, a copy of the instrument forged or altered should accompany the affidavit.)

(*Jurat.*) (Signature.)

Recognizance, as in usual form. (*See Recognizance.*)

FORM.

(*See Courts of Trial Justices, Rule* 15.)

FRAUD IN SALE OF PRODUCE.

(*See Factor.*)

Guilty of Fraud and Embezzlement.—Any person engaged in the business of buying corn, cotton, rice or such commodities, either on his own account or for others, who shall buy such on sale from a planter, commission merchant, or any other person or persons for cash, and shall fail or refuse to pay for the same, and shall make way with or dispose of the same before he shall have paid therefor, shall be deemed guilty of fraud and embezzlement, and shall be liable, on conviction, to be imprisoned in the Penitentiary for a term of not less than one year, nor more than five years, at the discretion of the Court. (16 Stat. 250, Sec. 1.)

Not Guilty if Products Destroyed by Accident.—No person, however, shall be convicted under this provision if he can show that the cotton, corn, rice or other products received by him was destroyed by accident, after due diligence on his part, or that he was forcibly deprived of the possession thereof. (*Ibid*, Sec. 3.)

FUGITIVES FROM JUSTICE.

Must be surrendered on demand.—By the Constitution of the United States, Act 4th, Sec. 2d, a person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

May be arrested before demand.—In the case of the State *vs.* Anderson, 1 Hill, 327, it was held that a person charged with treason, felony, or other crime, in one State, and fleeing to another, may, *before demand*

made on the Governor, be arrested in the State in which he is found for the purpose of being surrendered to the State from which he fled, either by warrant from a magistrate, or by private persons without a warrant; and such persons may justify the arrest, by showing that the prisoner has committed, or stands charged with a felony, or other crime, in another State; and the same rule applies to fugitives from a foreign nation.

Doubtful in misdemeanors.—In the case of Miller *vs.* Grice, 2 Richardson, S. C., 27, the judge below decides that this right does not extend to cases of misdemeanor; but the Court above neither sustains nor overrules the point.

FURNITURE.

(*Purloining from Lodgings.*)

Larceny.—Whoever shall take away, with intent to steal, embezzle or purloin any chattle, bedding or furniture, which, by contract or agreement, he or they are to use, or shall be let to him or them to use, in or with lodging, such taking, embezzling or purloining shall be, to all intents and purposes, taken, reputed and adjudged to be larceny and felony, and the offender shall suffer as in case of felony. (Gen. Stat., C. 129; S. 15, p. 717.)

GAMBLING.

(*See Lotteries.*)

1st.—Power of Trial Justice to Suppress.
2nd.—Of the Recovery of Money Lost at Gambling.
3d.—Of void Wagers.
4th.—Of the Offense and Punishment.
5th.—Forms.

1st.—POWER OF TRIAL JUSTICE TO SUPPRESS GAMBLING.

Rooms may be broken open.—Any Trial Justice, on information, under oath of any credible witness, of gambling being carried on or a gaming table kept in any house, is authorized to grant his warrant, under his hand and seal, to break open and enter any closed door or rooms, whenever the said offenses are alleged to prevail. (Gen. Stat., C. 79; S. 5, p. 407.)

Gamblers to give security for good behavior or be committed.—It shall and may be lawful for any two or more Trial Justices in any County or city whatsoever, to cause to come or be brought before them,

every person within their respective limits, whom they shall have just cause to suspect to have no visible estate, profession or calling to maintain themselves by, but do, for the most part, support themselves by gaming; and if such person or persons shall not make it appear to such justices the principal part of his or their expenses is not maintained by gaming, then such justices shall require of him or them sufficient securities for his or their good behavior for the space of twelve months; and, in default of his or them finding such securities, shall commit him or them to the common jail, there to remain until he or they shall find such securities, as aforesaid. (*Ibd.*, Sec. 11, p. 408.)

Wager of Five Dollars to Forfeit Recognizance.—If such person or persons finding securities as aforesaid, shall, during the time for which he or they shall be so bound to good behavior, at any one time or sitting, play or bet for any sum or sums of money, or other thing, exceeding in the whole the sum or value of five dollars, such playing shall be deemed and taken to be a breach of his or their behavior, and a forfeiture of the recognizance given for the same. (*Ibid*, Sec. 12.)

Trial Justices and Constables to take Oath to Suppress Gambling—Each and every Trial Justice and all Constables shall, before they be qualified to act in their respective offices, in addition to their respective oaths of office, take an oath, and, to the extent of their power and ability, carry into effect the Statutes against gambling, and in all cases, to bring to justice violations of the same, whenever such violations shall come within their view and knowledge. (*Ibid*, Sec. 16, p 409.)

2D.—OF THE RECOVERY OF MONEY LOST AT GAMBLING.

Property Lost may be Recovered by Action—Any person or persons whatsoever, who shall at any time or sitting, by playing at cards, dice table, or other game or games whatsoever, or by betting on the sides or hands of such as do play at any of the games aforesaid, lose to any one or more person or persons so playing or betting, in the whole, the sum or value of fifty dollars, and shall pay or deliver the same or any part thereof, the person or persons so losing and paying or delivering the same, shall be at liberty, within three months then next ensuing, to sue for and recover the money or goods so lost, and paid or delivered, or any part thereof, from the respective winner or winners thereof, with costs of suit, by action, to be prosecuted in any Court of competent jurisdiction. (*Ibid*, Sec. 6, p. 407.)

If Loser does not Sue any other Person May.—In case the person or persons who shall lose such money or other thing as aforesaid, shall not, within the time aforesaid, really and *bona fide*, and without covin or collusion sue, and with effect prosecute for the money or other thing so by him or them lost, and paid and delivered as aforesaid, it shall and may be lawful to and for any person or persons, by any such action or suits as aforesaid, to sue for and recover the same, and treble the

value thereof, with costs of suit, against such winner or winners as aforesaid; the one moiety thereof to the use of the person or persons that will sue for the same, and the other moiety to the use of the poor of the County where the offense shall have been committed. (*Ibid*, Sec. 7.)

Orders for Discovery.—Any person or persons, who, by virtue of the provisions herein contained, shall or may be liable to be sued for the said moneys, or other things so won, shall be obliged and compelled to answer, upon oath, such order or orders as shall be made against him or them, for discovering the sum and sums of money, or other things so won at play, as aforesaid. (*Ibid*, Sec. 8.)

3D.—OF VOID WAGERS.

Notes, &c., Void.—All notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, given, granted, or entered into, or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money or valuable thing whatsoever won by cock-fighting, horse-racing, or by gaming or playing of cards, dice, tables, tennis, bowls or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or any other game or games, or for the reimbursing or repaying any money knowingly lent or advanced at the time and place of such cock-fighting, horse-racing or play, to any person or persons so gaming or betting, as aforesaid, or that shall, during such cock-fighting or horse-racing or play, so bet, shall be utterly void, frustrate and of none effect, to all intents and purposes whatsoever. (*Ibid*, Sec. 9, p. 408,)

Grants, Conveyances, &c., of Land Void.—Where such mortgages, securities, or other conveyances shall be of lands, tenements, or hereditaments, or shall be such as to encumber or affect the same, such mortgages, securities, or other conveyance, shall enure and be to and for the benefit of, and shall devolve upon, such person or persons as shall have been, or may be, entitled to such lands, tenements, or hereditaments, in case the said grantor or grantors thereof, or the person or persons so encumbering the same, had been dead, and as if such mortgages, securities or other conveyances had been made to such person or persons by the person or persons so encumbering the same; and all grants and conveyances to be made for the preventing of such lands, tenements, or hereditaments from coming to, or devolving upon, such person or persons, hereby intended to enjoy the same, as aforesaid, shall be deemed fraudulent and void, and of none effect, to all intents and purposes whatsoever. (*Ibid*, S. 10.)

4TH.—OF THE OFFENSE AND PUNISHMENT.

Penalty for Playing at Certain Games, or Betting on the Sides of those who do Play.—If any person or persons shall play, at any tavern, inn, store, for the retailing of spirituous liquors, or in any house

used as a place of gaming, or in any barn, kitchen, stable, or other outhouse, or in any street, highway, open wood, race field, or open place, at any game or games, with cards or dice, or at any gaming table, commonly called A. B. C., or E. O., or any gaming table known or distinguished by any other letters, or by any figures, or Roly-Poly Table, or at *Rouge et Noir*, or at any Faro Bank, or at any other table or bank of the same or the like kind, under any denomination whatsoever, (except the games of billiards, bowls, back-gammon, chess, draughts, or whist, when there is no betting on the said billiards, bowls, back-gammon, chess, draughts, or whist,) or shall bet on the sides or hands of such as do game Any Trial Justice may, upon view or information on oath before him, bind over to appear at the next Court of General Sessions for the County in which such play shall be carried on, all and singular, the said person or persons who shall so play or bet, and shall require him or them to give good and sufficient security for his or their appearance thereat; and on his or her failure to give such security, shall commit him or them to the common jail of the said County; and shall also bind over the keeper or keepers of taverns, inns, stores for the retailing of spirituous liquors, public places, or houses used as a place for gaming, or other public house, to appear at the ensuing Court of Sessions; and every person or persons so playing, or betting on the sides or hands of such as do game, upon being convicted thereof, upon indictment, shall be imprisoned for a period not exceeding twelve months, and shall forfeit a sum not exceeding five hundred dollars, one-half to the use of the State, and the other half to the use of the informer, upon the conviction of such offender; and every person so keeping such tavern, inn, retail store, public place or house used as a place for gaming, or such other public house, shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months, and forfeit a sum not exceeding two thousand dollars, for each and every offense, one-half thereof to the use of the State, and the other half to the use of the informer. (*Ibid*, Sec. 1, p. 405 and 406.)

Penalty for Keeping, &c.—Gaming Tables, &c.—Any person or persons who shall set up, keep, or use, any gaming table, commonly called A. B. C., or E. O., or any gaming table known or distinguished by any other letters, or by any figures, or Roly-Poly table, or table to play *Rouge et Noir*, or any Faro Bank, or any other table or bank of the like kind, or of any other kind for the purpose of gaming, (except the game of billiards, bowls, chess, draughts, and backgammon,) upon being convicted thereof, upon indictment, shall forfeit a sum not exceeding five hundred dollars, and not less than two hundred dollars. (*Ibid*, Sec. 2.)

Betting on Elections.—Any person who shall make any bet or wager of money, or wager of any other thing of value, or shall have any share or part in any bet or wager of money, or wager of any other thing of value, upon any election in this State, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not exceeding

five hundred dollars, and be imprisoned not exceeding one month, one-half of the fine to go to the informer, and the other half to the use of the State. (*Ibid*, Sec. 2.)

Wagers Forfeited.—All and every sum or sums of money staked, betted, or pending in the event of any such game or games, as aforesaid, are hereby declared to be forfeited; one-half thereof to the State, and the other half to the informer or person seizing the same. (*Ibid*, Sec. 4.)

Imprisonment.—Upon conviction of every person under the provisions of any of the foregoing Sections of this Chapter, the Court before whom such conviction shall take place, is hereby required to commit such offender, to the common jail of the County, where such conviction shall happen, for a period not exceeding twelve months, unless such offender shall sooner pay the fine or fines herein imposed together with the costs of prosecution.

Proviso.—Provided, however, that all persons who might be the subject or liable to the fines and penalties imposed herein, either for gaming at or keeping a gaming table or tables, shall, upon being permitted by the Circuit Solicitor to become evidence in behalf of the State, be freed and exonerated from the same; and shall, besides, be entitled to one-half of the fines recovered from any individual upon his or their information. (*Ib.*, Sec. 13, p. 409.)

No corporation, having powers to grant licenses for the retailing of spirituous liquors, shall grant a license to any person or persons, who shall have been convicted of any of the offenses created herein; and every such license is hereby declared to be null and void, and shall not be received in evidence upon an indictment for retailing spirituous liquors without license. (*Ibid*, Sec. 14.)

In case any person or persons whatsoever shall assault and beat, or shall challenge or provoke to fight, any other person or persons whatsoever, upon account of any money won by gaming, playing or betting at any of the games aforesaid, such person or persons assaulting and beating, or challenging or provoking to fight such other person or persons upon the account aforesaid, shall, being thereof convicted upon an indictment or information, to be exhibited against him or them, for that purpose, suffer imprisonment in the County Jail where such conviction shall be had, for the term of two years. (*Ib.*, Sec. 15.)

FORMS.

Form No. 136.—Arrest Warrant and Affidavit for Gambling.

THE STATE OF SOUTH CAROLINA, }
County of ———. }

By A B, Trial Justice in and for the said County and the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at ———, in the County and State aforesaid, on the —— day of ———,

A. D., 18—, one E. F., at a certain game, (*describe game played at, whether cards, dice, or if at any gaming table, give name by which such table is known,*) with one G. H., did play and bet, and did win from him, the said G. H., a large sum of money, to wit, the sum of —— dollars.

These are, therefore, to command you to apprehend the said defendant, E. F., and bring him before me to be dealt with according to law.

Given under my hand and seal, this——day of —— A. D. 18—.

A. B , [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

Personally appeared before me, A. B , a Trial Justice in and for the said County and State, C. D., who being duly sworn says: That at ——, in the said County and State, on the —— day of ———, A. D. 18—, one E. F., at a certain game (*here describe the game played at, whether with cards, dice, etc., and the name of the game, if affiant knows; if at a gaming table by setting out the letters, figures, or name by which such table is known,*) with one G. H., did play and bet, and did win from him, the said G. H., a large sum of money, to wit, the sum of —— dollars.

That X. Y and Z. are material witnesses thereto.

C. D.

Sworn to before me this —— day of —— 18—.

A. B.,
Trial Justice.

FORM NO. 137.—ARREST WARRANT AND AFFIDAVIT FOR KEEPING A GAMING HOUSE.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ———. }

By A. B., Trial Justice in and for the said County and the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at (*insert name of town, village, street, neighborhood, or other description of the place,*) in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E. F. did keep a certain (*here insert the place kept, public house, retail store, etc.,*) and that the said (*public house or other place,*) was, on the day and year aforesaid, used as a public place for gaming.

These are, therefore, to command you to apprehend the said defendant and bring —— before us to be dealt with according to law.

Given under my hand and seal the —— day of ——, A. D. 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
County of ———.

Personally appeared before me, A. B., a Trial Justice in and for the said County and State, C. D., who being duly sworn, says: That at (*insert name of town, village, street, neighborhood or other description of the place,*) in the County and State aforesaid, on the —— day of ——, A D. 18—, one E. F., did keep a certain (*here set forth the kind of place kept, whether public house, retail store for the sale of spirituous liquors, etc ,*) and that the said (*public house, or other place,*) was, in the day and year aforesaid, used as a place for gaming, viz: one G. H. and H. E., then and there did play and bet at a certain game, (*kind of game played.*)

That X Y. and Z., are material witnesses thereto.

C. D.,

Sworn to before me this —— day of ——, 18—.

A. B.,
Trial Justice.

Form No. 138.—Warrant of Arrest and Affidavit for Keeping a Gaming Table.

THE STATE OF SOUTH CAROLINA,
County of———.

By A. B , Trial Justice, in and for the said County and the said State;

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at (*name of town, village, street, &c ,*) in the County and State aforesaid, on the ——— day of ——— A. D. 18 ——, one E. F., did set up, keep and use, a certain gaming table, commonly called (*describe table by its name, letters or figures,*) for the purpose of gaming.

These are, therefore, to command you to apprehend the said defendant, E. F., and bring him before us to be dealt with according to law.

Given under my hand and seal, at ——, this —— day of ———, 18—.

A. B [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
County of ———.

Personally appeared before me A. B., a Trial Justice in and for the said County and State, C. D., who being duly sworn, says: That at (*give name of town, village, street, neighborhood, or other description of place,*) in

the County and State aforesaid, on the ——— day of——— A. D. 18—— E. F. did set up, keep and use, a certain gaming table, commonly called, (*here describe the table by its name, letters or figures,*) for the purpose of gaming.

That X., Y. and Z. are material witnesses thereto.

C. D.

Sworn to before me this ——— day of ——— 18 ——.

A. B.,
Trial Justice.

(Recognizances as in usual form and conditioned for greatest extent of fine in any particular case.)

Form No. 139.—Warrant of Arrest by Two Trial Justices for Person Having no Visible Estate.

THE STATE OF SOUTH CAROLINA,
County of ———.

By A. B. and C. B., Trial Justices, in and for the said County and the said State.

To any Lawful Constable:

Whereas, we have just cause to suspect that E. F, hath no visible estate, profession or calling, to maintain himself by, but doth, for the most part, support himself by gaming.

These are, therefore, to command you to apprehend the said defendant, E. F., and bring him before us to be dealt with according to law.

Given under our hands and seals the ——— day of ———A. D. 18——.

A B., [L. S.]
Trial Justice.

C. B., [L. S.]
Trial Justice.

Form No. 140.—Recognizance Before Two Trial Justices, by Persons Having no Estate or Profession.

(*Penal Clause as in usual form.*)

Condition.—The condition of this recognizance is such, that if the said E. F., do keep the peace of the State, and be of good behavior towards all the citizens thereof, and especially that he shall not play at any game or games, or keep any gaming house or table, then this recognizance to be null and void, or else to remain in full force and virtue.

E. F. [L. S.]
Surety, [L. S.]
Surety, [L. S.]

Taken and acknowledged the day and year above written, before us.

A. B.,
Trial Justice.

C B.,
Trial Justice.

GAMING.

(*See Gambling.*)

GATES.

(*See Fences.*)

On Private Roads and Penalty for Interfering with.—It shall be lawful for any citizen of this State, over whose land any road may pass, other than a public highway, to erect gates thereon, and the persons owning or erecting such gates shall be liable to be indicted for a nuisance if they fail to keep them in good order; and in case any person or persons shall interfere with, injure, destroy or wilfully leave open such gates, such person or persons shall be liable to indictment as for a misdemeanor. (Gen. Stat., C. XLIV., Sec. 8 and 9, p. 266.)

GELDING.

(*See Horse.*)

GOATS.

(*See Cattle.*)

GRAIN.

(*See Burning, Malicious Mischief and Larceny.*)

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Tolls Allowed for Grinding.—No person shall take more toll for grinding corn, wheat, rye or other grain, into good meal or flour, than one-eighth part for any quantity under ten bushels, and for ten bushels

or any quantity above, at one time brought, one-tenth part only; and that all grain as aforesaid, chopped for hominy, feeding stock, or for distilling, one-sixteenth part. (Rev. Stat. c. LI., Sec. 17, p. 301.)

Penalty for Taking More than Allowed.—Any person taking more toll than hereinbefore directed, shall be subject to pay a fine to the amount of ten times the value of the toll so taken, to be recovered in the most summary way, before the nearest Trial Justice; one-half to the prosecutor, and the other half to the person aggrieved. (*Ib.*, Sec. 18.)

The City Council of Charleston shall have full power and authority to regulate and control the sale of grain, by measurement or weight, or both, sold within the corporate limits of the City, in such manner as will insure a fair, equal and uniform sale and measurement of the same. (*Ib.*, Sec. 19.)

GRAND LARCENY.

(*See Larceny and Jurisdiction.*)

GROUNDS OF ARREST.

Person Arrested Entitled to be Informed of the Grounds of Arrest. Every person arrested by virtue of process or taken into custody by an officer in this State, has a right to know from the officer who arrests or claims to detain him, the true ground on which the arrest is made; and an officer who refuses to answer a question relative to the reason for such arrest, or answers such questions untruly, or assigns to the party arrested an untrue reason for the arrest, or neglects, on request, to exhibit to the person arrested, or any other person acting in his behalf, the precept by virtue of which such arrest is made, shall be punished as for a misdemeanor. (Gen. Stat., 708.)

HABEAS CORPUS.

This writ lies either at common law, in which case it may be granted by a Judge, either in open Court or at Chambers, to any person, whether infant or of full age, illegally restrained of his or her liberty, or by authority of the Statute, 31 Ch. 2, C. 2, known as the *Habeas Corpus* Act, under which it is grantable only to persons confined for criminal or supposed criminal offenses.

The power to two Trial Justices to grant *habeas corpus* is conferred by Statute.

1st.—Who Entitled to Benefit of Habeas Corpus.
2d.—Who may Grant, and When.
3d.—Of the Direction, Service, and Return of the Court.
4th.—Of the Hearing, Discharge, and Effect thereof.
5th.—Penalty for Neglect or Refusal.
6th.—Forms.

1st.—WHO ENTITLED TO BENEFIT OF HABEAS CORPUS.

Entitled to Benefit of.—If any person or persons shall be or stand committed for any crime, unless for felony (*the punishment of which is death*), or treason plainly expressed in the warrant of commitment, or unless charged as accessary before the fact, to treason or felony (*the punishment of which felony is death*), or with suspicion thereof, or unless charged with suspicion of treason or felony (*which felony is punishable with death*), which shall be plainly expressed in the warrant of commitment, they shall be entitled to the writ of *habeas corpus*. (Gen. Stat., C. CXVIII, Sec. 1, p. 543.)

Persons Committed for Treason or Felony shall be Indicted the next Term, or let to Bail, &c.—If any person committed for treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer on petition in open Court, the first week of the term, or to be brought to his trial, shall not be indicted sometime in the next term after such commitment, it shall and may be lawful to and for the Judge of the Circuit Court, and he is hereby required, upon motion made in open Court the last day of the term, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to him, upon oath made, that the witnesses for the State could not be produced the same term; and if any person committed as aforesaid, upon his prayer or petition in Court the first week of the term, to be brought to his trial, shall not be indicted and tried the second term after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment. (*Ibid*, Sec. 2.)

If not asked for two terms.—If any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such person so wilfully neglecting shall not have any *habeas corpus* to be granted in vacation time, in pursuance of this Chapter. (*Ibid*, Sec. 3.)

2d.—WHO MAY GRANT, AND WHEN.

Two Trial Justices to Grant Writs of Habeas Corpus.—Any two Trial Justices are authorized and required to grant the writ of *habeas corpus* as fully, effectually and lawfully as any Judge of the Court of

Common Pleas and General Sessions or Justice of the Supreme Court of this State. (*Ibid*, Sec. 14.)

Judges to Grant Writs, &c.—Any of the Judges of this State in vacation time and out of term, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by the person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request, made in writing, by such person or persons as are committed, as aforesaid, or any one on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant a writ of *habeas corpus*, under the seal of such Court, whereof he shall be one of the Judges. (*Ibid*, Sec. 4.)

Granting of Writ During Session of Court.—During a term of the Circuit Court for that County where any prisoner is detained, no person shall be removed from the common jail upon any writ of *habeas corpus* granted in pursuance of this Chapter, but, upon any such writ, shall be brought before the Circuit Judge, in open Court, who is thereupon to do what to justice shall appertain ((*Ibid*, Sec. 11.)

After Adjournment.—After the Circuit Court adjourns, any person or persons detained may have a writ of *habeas corpus*, according to the direction and intention of this Chapter. (*Ibid*, Sec. 12)

3D.—OF THE DIRECTION, SERVICE, AND RETURN OF THE WRIT.

To Whom Directed.—Such writ shall be directed to the officer or officers in whose custody the party so committed or detained shall be, and shall be returned immediately before the Judge issuing the same. (*Ibid*, Sec. 5.)

Service of.—The said writ shall be served on the said officer, or left at the jail or prison with any of the under officers, under keepers, or deputy of the said officers or keepers. (*Ibid*, Sec. 6.)

Prisoner to be Brought Up on Payment of Charges, Etc.—The said officer or officers, his or their under officers, under keepers or deputies, shall within three days after the service thereof. upon payment or tender of the charges of bringing the said prisoner, (*to be ascertained by the Judge or Court that awarded the same, and endorsed upon the said writ,*) not exceeding ten cents per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the Court or Judge to which he shall be brought, and that he will not make any escape by the way, make return of such writ, and bring or cause to be brought the body of the party so committed or restrained unto or before the Judge or Court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof, and shall then certify the true causes of his detainer or im-

prisonment: *Provided, however*, if any prisoner be not able to pay the said charges, the same shall be paid by the county wherein he is confined. (*Ib.*, S. 7.)

Time within which Prisoner must be brought before Court.—If the place of imprisonment of the said party be beyond the distance of twenty miles from the place where such Court is held, and not above one hundred miles, he shall be brought before the Court, or the person or persons before whom the writ is returnable within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days after the delivery of such writ, and not longer.—(*Ib.*, S. 8.)

4TH.—OF THE HEARING, DISCHARGE AND EFFECT THEREOF.

Notice to be given to the Attorney-General or Circuit Solicitor. Where it appears from the return of the writ or otherwise that the party is imprisoned on a criminal accusation, he shall not be discharged until sufficient notice is given to the Attorney-General or Circuit Solicitor, or other attorney acting for the State, that he may appear and object to such discharge if he thinks fit. (*Ib.*, S. 10.)

Proceedings upon hearing of the Return,—If upon a hearing the party shall be entitled to his discharge, then the Judge before whom he is brought shall within two days after the party shall be brought before him, discharge the said prisoner from his imprisonment, taking his recognizance, with one or more surety or sureties, in any sum, according to his discretion, having regard to the nature of the offense for his appearance in the Court of General Sessions the term following for such county where the offense was committed, or in any Court of such other county where the said offense is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said Court where such appearance is to be made, but if no legal cause be shown for the imprisonment or restraint, the prisoner shall be discharged therefrom.—*Ibid*, S. 9.)

Person Discharged not to be Re-Arrested.—No person who shall be delivered or set at large upon any writ of *habeas corpus*, shall at any time be again imprisoned or committed for the same offense by any person or persons whatsoever, other than by the legal order and process of such Court wherein he shall be bound by recognizance to appear, or other Court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this chapter, re-commit or imprison for the same offense, or pretended offense, any person delivered or set at large, as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of two thousand five hundred dollars; any colorable pretense or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid. (*Ibid*, S. 13.)

5TH.—PENALTY FOR NEGLECT OR REFUSAL.

Penalty for neglect.—Any person whatsoever to whom any prisoner is given, either judicial or ministerial, by this chapter, and which, by virtue hereof, he is required and commanded to do, who shall wilfully neglect, refuse or omit to do the same, when the same shall be legally requested and demanded, according to the directions herein, and when the person or persons so requesting and demanding the same are legally entitled to request or demand by the provisions of this Chapter, then and in such case such person, whether magistrate or officer, wilfully so refusing, neglecting or omitting what the Chapter requires and commands, for each such wilful neglect, refusal or omission, shall forfeit the sum of five hundred (500) dollars, and shall be thereafter incapable of holding or executing his office. (*Ibd.*, S 15.)

Penalty for signing warrant.—Also, if any person or persons shall, after such commitment aforesaid, make out and sign or countersign any warrant or warrants for such removal aforesaid, contrary to this Chapter, as well as that makes or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures mentioned in the above Section. (*Ibd.*, Sec. 18.)

Penalties, how recovered.—The said penalties may be recovered by the prisoner or party grieved, his executors and administrators, against such offender, his executor or administrators, by action in any Court of competent jurisdiction, wherein no protection, privilege, injunction or stay of prosecution shall be admitted or allowed. (*Ibd.* S. 16).

Persons not to be removed from one prison to another without cause.—If any person or persons, citizens of this State, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, the said person shall not be removed from the said prison and custody, into the custody of any officer or officers, unless it be by *habeas corpus*, or other legal writ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common jail, or where any person is sent, according to law, to any common work-house or house of correction; or where the prisoner is removed from one place or prison to another within the same County, in order to his or her trial or discharge under course of law; or in case of sudden fire or infection, or other necessity. (*Ibid*, Sec. 17.)

An appeal from all final decisions rendered on applications for writs of *habeas corpus* shall be allowed, as is provided by law in civil actions. (*Ibid.*, S. 19.)

6TH.—FORMS.

FORM 141.—PETITION FOR A WRIT OF HABEAS CORPUS.

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

To A. B., and C. B, Trial Justices in and for the said County in the said State:

The humble petition of E. F., of ——, in the State aforesaid, sheweth that your petitioner is retained in the custody of M. N., Sheriff of——in jail, by virtue of a commitment made under the hand and seal of——one of the Trial Justices in and for the County and State aforesaid; your petitioner, therefore, humbly prays your Honors to grant him a writ of *habeas corpus*, to bring your petitioner before your Honors, that the case of the commitment being known and seen, such further proceedings may be had thereon, as are agreeable to law and justice.

(Date.) (Signature of Defendant or his Attorney.)

FORM NO. 142.—WRIT OF HABEAS CORPUS.

To M. N. Sheriff of ——.

You are hereby commanded, that the body of E. F., by whatever name the said E. F., is called into and under custody, committed and detained, as it is said, together with the day and cause of caption and detention of the said E. F., you have before us, the subscribing at—— immediately after the receipt hereof, to do and receive what we the said Trial Justices, shall then and there consider in that behalf; and have you then and there this writ.

Witness, &c.

A. B. [L. S.]
Trial Justice.
C. B. [L. S.]
Trial Justice.

ENDORSEMENT OF WRIT.

All writs of *habeas corpus* must be endorsed as follows; "*Per Statutum, tricesimo primo, Caroli secundi regis,*" and shall be signed by the person awarding the same.

If the offense be, or be not bailable, the prisoner may be remanded or discharged, as the case may be, which may be by order, as follows:

FORM NO. 143.—ORDER TO REMAND PRISONER.

On hearing the return in this case, and it appearing to us, that the said prisoner is detained by warrant of commitment for an offense not bailable, it is ordered that he be remanded, to await his trial.

This —— day of —— A. D, 18—.

A. B.
Trial Justice.
C. B.
Trial Justice.

FORM NO. 144.—ORDER OF DISCHARGE.

On hearing the return in this case, and it appearing that the said prisoner is detained in custody under a warrant of commitment for a bailable offense, and he having entered into recognizance, with surety according to law; it is ordered, that he be discharged from his imprisonment.

This day of —— A. D, 18—.

A. B.
Trial Justice.
C. B.
Trial Justice.

HAY.

(*See Burning.*)

HAWKERS AND PEDDLERS.

Definition.—Persons going from place to place with goods or merchandise for sale.

Transient persons, who offer for sale goods in a house or store, at auction or private sale, are not hawkers and peddlers (State *vs.* Belcher 1 McM., 42.)

THE ACT CONCERNING.

Must Obtain License.—Before any hawker or peddler shall expose to sale or sell any goods, wares or merchandise in any County in this State, such hawker or peddler shall first apply to the Clerk of the Court of Common Pleas and General Sessions of such County for a license for the sale of his or her goods, wares, or merchandise; and the said Clerk, upon the payment to him by such hawker or peddler of the sum of ten dollars, shall thereupon issue to such hawker or peddler a license authorizing the said hawker or peddler so to expose to sale and sell such goods, wares and merchandise within the limits of the County wherein such license shall be granted, for the term of one year from the date thereof, and no longer. (16 Stat., 64, Sec. 1.)

Who may sell under such License.—Such license, so granted as aforesaid, shall not be construed to authorize or permit any other person to sell or expose to sale any goods, wares and merchandise, except the person to whom, under whose name it shall have been issued; that it shall not be lawful to transfer such license by assignment, endorsement, delivery, or otherwise, so as to enable any other person to use it for such purpose (*Ibid*, Sec. 2.)

Selling Without License a Misdemeanor.—If any hawker or peddler shall sell or expose for sale any goods, wares or merchandise in any County in this State, without having obtained a license for that purpose according to the provisions herein, he or she shall be deemed guilty of a misdemeanor.

How Punishable.—And, upon conviction thereof shall be punished by imprisonment in the County jail for a term of one month, or a fine of fifty dollars, or both at the discretion of the Court. (*Ibid*, Sec. 3.)

Exceptions.—The provisions herein shall not extend to vendors of fruit, fruit trees, maps, newspapers, magazines, books, vegetables, tobacco, provisions of any kind, or agricultural products, or the products of nurseries, or to sales by samples by persons travelling for established commercial houses, or to sales of staple articles manufactured in this State. (*Ibid*, Sec. 4.)

All moneys collected by fines herein shall be turned over to the County Treasurers of the several Counties, to be applied to school purposes. (*Ibid*, Sec. 5.)

HIGHWAYS.

1st.—Of the Duty and Liability of County Commissioners in Relation to.

2d.—Of the Duties, &c, of Overseers and Highway Superintendents.

3d.—Who are Liable to Road Duty, and Penalty for the Failure to Work.

4th.—Form, Warrant for Road Defaulter.

1st.—OF THE DUTY AND LIABILITY OF COUNTY COMMISSIONERS IN RELATION TO.

Highway District.—Each township in the several Counties of this State, shall constitute a Highway District

Appoint Supervisors.—And it shall be the duty of the Board of County Commissioners of each County, annually, during the early portion of each year, to appoint some suitable and proper person Superintendent of Highways for each Highway District. He shall be a person resident in the Highway District for which he is appointed, and of those liable to road duty therein, and by reason of said office exempt from said duty. (17 Stat., 144.)

When Plaintiff Entitled to Verdict for Damages for Injuries.—If any person receive bodily injury or damage in his person or property through a defect in the repair of a highway, causeway or bridge, he may recover, in an action against the County, the amount of damages fixed

by the finding of a jury. If such defect in any road, causeway or bridge existed before such injury or damage occurred, such damages shall not be recovered by the person so injured, if his load exceeded the ordinary weight of the County, where such injury or damage occurred. (15 Stat., 784)

When Not.—If before the commencement of an action provided for in the above Section, the County Commissioners tender to the plaintiff the amount which he might be entitled to recover, together with all legal costs, and the plaintiff refuse to accept the same, and does not recover upon subsequent trial, a sum larger than the amount so tendered the defendants shall recover costs, and the plaintiff be entitled to the results of no verdict.

Penalty for County Commissioners Neglecting to Repair.—If the Commissioners of any County neglect to have repaired any of the highways and bridges, which, by law are required to be kept in repair, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred, nor more than five hundred dollars, in the discretion of the Court. The County Commissioners shall authorize the overseer of any district, to allow a man working one day, and also furnishing a horse, plough or cart, two day's labor; and one working himself for one day, and furnishing a wagon and two horses, mules or oxen, three day's labor. (*Ibid*, Sec. 7.

Duties of Commissioners with Respect to Bridges.—The County Commissioners in this State are hereby authorized and empowered to have special supervision of the building of new bridges over the rivers and creeks of this State, also of extra and expensive repairs of old bridges. When such work is to be accomplished, the Commissioners shall give fifteen days' notice in the County paper, and in writing duly posted in the neighborhood in which such labor is to be performed, giving notice that the Commissioners of the section in which such work is to be performed, will be at such a place on such a day and hour, with suitable specifications to let out to the lowest bidder, and to take from the successful bidder sufficient bond for the faithful performance of his duty. When the work is done, it shall be inspected by the Commissioner letting it out, whose duty it shall be to report the result of his investigation to the full Board, who shall accept or reject the same accordingly, as they may determine, whether or not the contractor has or has not complied with the terms of his contract. If any bridge over waters of this State which constitute a boundary line between Counties, shall be necessary to be erected or repaired, it shall be the duty of the Commissioners of such Counties, to cause the same to be erected or repaired, in the manner aforesaid, each County bearing an equal share of the expense so incurred. And when any such bridge already exists, or shall hereafter be built, it shall be the duty of the said Commissioners to divide the same, by measurement, from the centre; and each Board shall be responsible for the good condition of the half next adjoining

the County in which they exercise the functions of office. And when it becomes necessary to build a new bridge, or to entirely replace an old one, which has been carried away or destroyed, it shall be the duty of the Board to do the same as aforesaid. (*Ibid*, Sec. 12.)

OF THE DUTIES, &c., OF SUPERINTENDENTS OF HIGHWAYS AND OF OVERSEERS.

The Superintendents of Highway Districts shall divide the highways in his district into suitable sections or districts, of not less than two, or more than five miles each, and he shall appoint an overseer of roads for each of said sections or districts. He shall also divide the persons liable to road duty in his highway district, into convenient and suitable squads or companies, and assign a squad or company to each overseer of a section or district. He shall, as far as practicable, assign the road hands to the nearest roads.

Duty of Overseer.—He shall require the Overseer of the roads in his highway district, to call out the hands assigned to their respective sections or districts, and work the roads and repair and build the bridges of same, whenever he may deem it necessary, after twelve hours notice, and shall require every road hand to bring with him for use, a hoe, axe, mattock, spade, or other tool for work on the road or bridge.

Number Days.—He shall determine the number of days for each working and the tools to be brought by such road hand: *Provided* that not more than twelve days are required of any one hand in a year.

Penalty against Superintendant.—When the County Commissioners or any of them give orders to the Superintendent of highway districts to have any work done in his district, and he neglects to do the same, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Trial Justice Court, he shall be fined in a sum of not less than ten nor more than fifty dollars, and the overseers of districts for neglecting to call out their hands and work the roads when required by the Superintendent of highway districts, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Court above named, be fined in a sum of not less than five nor more than twenty dollars. Whenever a highway runs along the line of two highway districts, the Superintendent of the same shall jointly divide the highway into suitable sections and appoint an overseer for each of said sections, and they shall assign to each overseer from their respective districts or from either district such laborers and road hands as may be necessary to work the same.

Each Superintendent of highway districts shall cause his overseers when working sections on which there are bridges, to have such repairs or work done on such bridges to preserve them and keep them in order, as can conveniently be done by the road hands. And in case the

needed repairs to bridges are of such a character that they shall, in the opinion of the Superintendent be given out under contract by the County Commissioners, he should report the same to said Commissioners without delay. (17 Stat. Sec. 2,145.)

Duty when Highway is Suddenly Obstructed.—On any extraordinary occasion when any highway shall be suddenly obstructed by storm or otherwise, so as to require immediate labor to remove said obstruction, it shall be the duty of the overseer in whose district such obstruction occurs, to proceed forthwith to have such obstructions removed, and for this purpose shall summon to his aid a sufficient number of working men to open and repair such highway. If any person shall, in such case, perform more days labor than is required by law for the year, he shall be paid for any such surplus, at the rate of one dollar per day, by the County Commissioners, upon the certificate of the overseer, showing that such overplus of labor was performed.

Penalty for Neglect.—If on any such extraordinary occasion the overseer shall for the space of a day, after application made to him for such purpose by any citizen residing in his district, neglect to call out a sufficient number of persons to speedily open and repair such highway, he shall forfeit and pay to the County Commissioners of his County, to be expended on the repairs of highways, when and where necessary in his district, the sum of fifteen (15) dollars, unless the overseer shall show sufficient reason for such neglect, the said fifteen (15) dollars to be collected by an action for debt, in the name of such County Commissioners, as plaintiffs, before any Trial Justice in said County. (15 Stat., 784, Sec. 5.)

The overseers in their respective districts shall have full power to cut down and make use of any timber, wood, earth, or stone in or near the road, bridges or causeways, for the purpose of repairing the same, as to them shall seem necessary, making just compensation therefor, should the same be demanded. Overseers shall not authorize the cutting down of any timber trees reserved by the owner in clearing his land, or planted for the purpose of shade or ornament, either in the field, around the springs, or about the dwelling houses or appurtenances, nor the cutting down of any rail timber when any other timber may be procured at or near the place, or take stone or earth from within the grounds of any person enclosed for cultivation, without the consent of the owner of the same If any person or persons shall by any means hinder, forbid or oppose the said overseers, or either of them, from cutting down and making use of any timber, wood, stone or earth in any or near said roads or causeways for slight repairs of bridges, for the purpose of making or repairing the same, or shall in any manner obstruct the passage of said road, causeways or bridges, by gates, fences, ditches, or any other obstructions, except where authorized by law, or shall hinder, forbid or threaten any traveller from travelling any public road, and every person, for such offense, shall be deemed guilty of a misdemeanor, and,

upon conviction thereof, in a Trial Justice's Court, shall be fined in a sum not less than five nor more than ten dollars. (*Ibid*, Sec. 10.)

3d.—WHO LIABLE TO ROAD DUTY, AND PENALTY FOR FAILURE TO WORK.

Who Liable to Road Duty—Overseer to make out Lists.—All able-bodied male persons, between the ages of sixteen and fifty years, except in the following Counties, viz: Spartanburg, Chesterfield and Abbeville, the age is between the ages of seventeen and fifty years, and in Chester, Edgefield and Newberry between the ages of sixteen and fifty-five years, shall be liable, annually, to work on the public highways and roads not less than three nor more than twelve days, under the direction of the overseer of the district in which they may reside. In warning men to work upon the public roads, the overseer shall make out a list for the warner, requiring him to give notice to each person the kind of tool he shall use in working upon the highways and roads. (*Ibid*, Sec. 8; 16 Stat., 272; *Ibid*, 515; *Ibid*, 736; 17 Stat., 257.)

And it shall be the duty of every employer to furnish to the overseer a list containing the names of all persons in his employment liable to road duty whenever the same shall be required of him by the overseer. Upon the failure of any employer to comply with such demand, he shall be deemed guilty of a misdemeanor, and upon conviction thereof before any Trial Justice, shall pay a fine of ten dollars or ten days' imprisonment for every such offense. (16 Stat, 515.)

Subject to Direction of Overseer.—Any person liable to road duty, who shall have been duly warned for such working, shall be subject to the direction of the overseer in charge.

Penalty for Refusing to Work.—If any person of the legal age refuse to work upon the highways and roads, (having no justifiable excuse,) according to the direction of the overseer, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Trial Justice's Court, shall be fined in a sum not less than five dollars, nor more than ten dollars, or be imprisoned in the County jail for a period of not less than five nor more than twenty days. (15 Stat, Sec. 4, 784.)

How Persons Liable to Duty may be Relieved.—If any person, having been notified or warned as above provided, shall pay to the County Treasurer of the County in which he may reside, the sum of one dollar per day for each day's work required, the same shall be received in lieu of such labor, and shall be applied by the Commissioners of such County to the construction and repair of the highways in the districts to which they belong. (*Ibid*, Sec. 9.)

Penalty for Refusing to Work when Highway is Suddenly Obstructed.—If on any extraordinary occasion, when any highway shall be suddenly obstructed by storm or otherwise, so as to require immediate labor to remove such obstruction, any person liable to work on

highways, after being summoned for the purpose of removing such obstruction by the order of the overseer, shall neglect to turn out and assist in opening and repairing such highway, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any Trial Justice's Court, shall be fined three dollars per day, said fine to be collected and expended as hereinbefore provided in the matter of forfeitures of overseers. (*I bid*, Sec. 5.)

Persons Performing Duty in one County Exempt from Duty in Another—Residence—What to be Regarded.—If any person liable to road duty shall remove from one County to another, who had prior to such removal performed the whole or any part of it, or in any other way has paid the whole or any part of the amount aforesaid in lieu of such labor, and shall produce a certificate or receipt of the same from the overseer of the district from which such person has removed, such certificate or receipt shall operate as a complete discharge for the amount therein specified. The residence of any person who has a family shall be held where his family resides, and the residence of any other person shall be held to be where he boards in any County of this State. (*I bid*, Sec. 11.)

FORMS.

FORM NO. 145.—ARREST WARRANT AND AFFIDAVIT FOR ROAD DEFAULTER

THE STATE OF SOUTH CAROLINA,
COUNTY OF———.

By A. B., Trial Justice in and for the said County and the said State.

To any lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at ———, in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E. F., liable to road duty in the highway district of which he, the said C. D., is overseer, being duly warned, did fail and refuse to appear and contribute the labor required, and for which he was so warned.

These are, therefore, To command you to apprehend the said defendant, E. F., and bring him before me, to be dealt with according to law.

Given under my hand and seal, the —— day of ———, 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

Personally appeared before me, A. B., a Trial Justice of the said County and the said State. C. D., who, being duly sworn, says: That at ———, in the County and State aforesaid, on the —— day of ———,

A. D. 18—, E. F., an able-bodied man, liable to road duty, under the Statute, in the highway district of which he the said C. D., is overseer, being duly warned, did fail and refuse to appear and contribute the labor required by law upon the public roads of the said district, and for which he was so warned, contrary to the Statute in such cases provided.

C. D.

Sworn to before me this ——— day of ———, 18—.

A. B., *Trial Justice.*

HOMICIDE.

Offenses against the life of a man comes under the general name of homicide, which, in our law, signifies the killing of a man by a man. (1st Haw. P. C., C. 26.)

1st.—Justifiable Homicide.
2d.—Excusable Homicide.
3d.—Felonious Homicide.

1st.—JUSTIFIABLE HOMICIDE.

Execution of Malefactors.—*By command of law.*—Amongst the acts of unavoidable necessity may be classed the execution of malefactors by a person whose office obliges him, in the performance of public justice, to put those to death who have forfeited their lives by the laws and verdict of their country. These are acts of necessity, and even of civil duty; and, therefore, not only justifiable, but commendable, when the law requires them. But the law must require them, otherwise they are not justifiable; and, therefore, wantonly to kill the greatest malefactors, would be murder; and we have seen that all acts of official duty should, in the nature of their execution, be conformable to the judgment by which they are directed. (1 Russ., 345.)

Officers Killing those who Assault and Resist them.—*In advancement of public justice.*—Amongst the acts done by the permission of the law for the advancement of public justice, may be reckoned those of the officer who, in the execution of his office, either in a civil or criminal case, kills a person who assaults and resists him. The resistance will justify the officer in proceeding to the last extremity. So that in all cases, whether civil or criminal, where persons having authority to arrest or imprison, and using the proper means for that purpose, are resisted in so doing, they may repel with force, and need not give back; and if the party making resistance is unavoidably killed in the struggle, this homicide is justifiable. A rule founded in reason and public utility; for few men would quietly submit to an arrest, if in every case of re-

sistance the party empowered to arrest were obliged to desist and leave the business undone; and a case in which the officer was holden guilty of manslaughter because he had not first given back, as far as he could, before he killed the party who had escaped out of custody, in execution for a debt, and resisted being retaken, seems to stand alone, and has been mentioned with disapprobation. (1st Russell, 546.)

Officers Killing Those who Fly from Arrest.—When the party does not resist, but merely flies to avoid arrest, the conduct of the officer should be cautiously regulated by the nature of the proceeding. For, in civil cases, and also in the case of a breach of the peace, or any other misdemeanor, short of felony, if the officer should pursue a defendant flying in order to avoid arrest, and should kill him in the pursuit, it will be murder or manslaughter, according to the peculiar circumstances by which such homicide may have been attended. But if a felony be committed, and the felon fly from justice, or a dangerous wound be given, it is the duty of every man to use his best endeavors for preventing an escape; and if in the pursuit the party flying be killed, when he cannot be otherwise overtaken, this will be deemed justifiable homicide. This rule is not confined to those who are present, so as to have ocular proof of the fact, or to those who first come to the knowledge of it; for if in these cases fresh suit be made, and *a fortiori* if hue and cry be levied, all who join in aid of those who began the pursuit, are under the same protection of the law; and the same rule holds, if a felon, after arrest, break away as he is carrying to jail, and his pursuers cannot retake without killing him. (*Ibid*, 547.)

Where a person is indicted for felony, and will not suffer himself to be arrested by an officer having a warrant for that purpose, the officer may lawfully kill him if he cannot otherwise be taken, though such person be innocent, and though in truth no felony have been commited; but it seems that this must be understood only of arrests by officers and does not extend to arrests by private persons of their own authority. (*Ibid*, 548.)

Officers dispersing a mob, etc.—In the case of a riot or a rebellious assembly, the peace officers and their assistants, endeavoring to disperse the mob, are justified both at common law and by the riot Act, in proceeding to the last extremity, in case the riot can not otherwise be suppressed. And it has been said, that perhaps the killing of dangerous rioters may be justified by any private persons who cannot otherwise suppress them, or defend themselves from them, inasmuch as every private person seems to be authorized by the law to arm himself for the preservation of the peace. (*Ibid.*)

Jailors and their assistants killing prisoners.—Jailors and their officers are under the same special protection as other ministers of justice; and, therefore, if in the necessary discharge of their duty, they meet with resistance, whether from prisoners in civil or criminal suits, or from others, in behalf of such prisoners, they are not obliged

to retreat as far as they can with safety, but may freely, and without retreating, repel force by force; and if the party resisting happen to be killed, this, on the part of the jailor, or his officer, or any person coming in aid of him, will be justifiable homicide. (*Ibid.*)

Homicide in the prevention of any forcible and atrocious crime — *For prevention of crime.* A man may repel force by force in defense of his person, habitation, or property, against one who manifestly intends and endeavors, by violence or surprise, to commit a known felony upon either. In these cases he is not obliged to retreat, but may pursue his adversary till he finds himself out of danger; and if, in a conflict between, he happens to kill, such killing is justifiable. But it has been holden, that this rule does not apply to any crime unaccompanied with force, as picking of pockets. It seems, therefore, that the intent to murder, or commit other felonies attended with force or surprise should be apparent, and not be left in doubt; so that if A. make an attack upon B., it must plainly appear by the circumstances of the case (*as the manner of the assault, the weapon, &c.*), that the life of B. is in imminent danger; otherwise, his killing the assailant will not be justifiable self-defense.

And the rule clearly extends only to cases of felony; for if one come to beat another or to take his goods merely as a trespasser, though the owner may justify the beating of him, so far as to make him desist, yet if he kill him, it is manslaughter. But if a house be broken open though in the day time, with a felonious intent, it shall be within the rule. (1st Russell, 549.)

Persons Killing Those Who Are Attempting to Rob or Murder or Commit Burglary, Etc.—A Statute made in the affirmance of the common law, after reciting that it had been doubted whether, if any person should attempt feloniously to rob or murder any persons, in or near any common highway, cartway, or footway, or in their mansions, messuages or dwelling places, or attempt to break any dwelling house in the night time, and should happen in such felonious intent to be slain by those whom they should so attempt to rob or murder, or by any person being in their dwelling house, attempted to be broken open, the person so happening to slay the person so attempting to commit murder or burglary, should forfeit goods and chattels, enacts "that if any person or persons be indicted or appealed of or for the death of any such evil disposed person or persons attempting to murder, rob, or burglarily to break mansion houses, as if above said, the person or persons so indicted or appealed thereof, and the same by verdict so found and tried, shall not forfeit or lose any lands, tenements, goods or chattels, for the death of any such evil disposed person in such manner slain, but shall be thereof and for the same fully acquitted and discharged," in like manner as if lawfully acquitted of the death of such person. But though the Statute only mentioned certain cases, it must not be taken to imply an exclusion of any

other instances of justifiable homicide which stand upon the same grounds of reason and justice. So that the killing of one who attempts the wilful burning of a house, is free from forfeiture without the aid of this Statute. (*Ibid*, 550)

Interference by Third Persons to Prevent Felonies.—Where a known felony is attempted upon any one, not only the party assaulted may repel force by force, but his servant attending him, or any other person present, may interpose to prevent the mischief, and if death ensue, the party so interposing will be justified.

So where an attempt is made to commit arson or burglary, in the habitation, any part of the owner's family, or even a lodger, may lawfully kill the assailants, in order to prevent the mischief intended. (1st Russell, 552.)

Interference by Third Persons in Cases of Mutual Combats and Affrays.—But in cases of mutual combats or sudden affrays, a person interfering should act with much caution. Where indeed, a person interferes between two combatants with a view to preserve the peace, and not to take part with either, giving due notice of his intention, and is under the necessity of killing one of them in order to preserve his own life or that of the other combatant, it being impossible to preserve them by other means, such killing will be justifiable ; but in general, if there be an affray and an actual fighting and striving between persons, and another run in and take part with one party, and kill the other, it will not be justifiable homicide, but manslaughter. (*Ibid.*)

Time within which Homicide will be Justifiable.—It should be observed, that homicide committed in the prevention of forcible and atrocious crimes, is justifiable only upon the plea of necessity, it cannot be justified unless the necessity continue to the time when the party is killed. Thus, though the person upon whom a felonious attack is first made be not obliged to retreat, but may pursue the felon till he finds himself out of danger. Yet, if the felon be killed after he has been properly secured, and when the apprehension of danger has ceased, such killing will be murder, though, perhaps, if the blood were still hot from the contest or pursuit, it might be held to be only manslaughter, on account of the high provocation. (*Ibid.*)

2d.—EXCUSABLE HOMICIDE.

BY MISADVENTURE,

(*In Self-Defense*)

By Misadventure —Homicide *per infortunium* or misadventure, is where a man doing a lawful act, without any intention of hurt, and using proper precaution to prevent danger, unfortunately kills another ; as where a man is at work with a hatchet and the head thereof flies off and kills a stander by; or where a person qualified to keep a gun is

shooting at a mark and undesignedly kills a man, for the act is lawful and the effect is merely accidental. So where a workman throws rubbish from a house in the ordinary course of his work, by which a person underneath is killed, this is homicide by misadventure only, if it were done in a retired place where there was no probability of persons passing by, and none had been seen about the spot before, or if timely and proper warning were given to such as might be below. So when a person is moderately correcting his child, a master his apprentice or scholar, or an officer punishing a criminal (as by whipping) and happens to occasion his death, it is only misadventure, for the act of correcting was lawful; but if he exceeds the bounds of moderation either in the manner, the instrument, or the quantity of punishment, and death ensues, it is manslaughter at least, and in some cases (*according to circumstances*) murder, for the act of immoderate correction is unlawful. Likewise to whip another's horse, whereby he runs over a child and kills him, is held to be accidental death in the rider, for he has done nothing unlawful; but it is manslaughter in the person who whipped him, for the act was a trespass, and at best a piece of idleness of inevitable dangerous consequence.

Where one is lawfully using an innocent diversion, as shooting at butts, or at a bird, etc., by the glancing of an arrow, or such like accident, kills another, this is only homicide by misadventure. So where a person happens to kill another in playing a match of foot ball, wrestling, or such like sports, which are attended with no apparent danger of life, and intended only for the trial, exercise and improvement of the strength, courage and activity of the parties. In general, if death ensues in consequence of an idle, dangerous and unlawful sport, the slayer is guilty of manslaughter, and not misadventure only, for these are unlawful acts. Thus if a man by shooting of a gun or throwing stones in a city or highway, or other place where men usually resort, by throwing stones at another wantonly in play, which is a dangerous sport and has not the least appearance of any good intent, or by doing any other such idle action as cannot but endanger the bodily hurt of some one or other, or by pitching or playing at handsword without the kings command, or by parrying with naked swords, covered with buttons at the points, or with swords in the scabbard, or such like rash sports which cannot be used without the manifest hazard of life, he is guilty of manslaughter. (2d Tomlins, 100.)

In Self-defense.—Homicide in a man's own defense seems to be where one who hath no other possible means of preserving his life from one who combats with him, on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity, and not only he who, upon an assault, retreats to a wall, or some such strait, beyond which he can go no further before he kills the other, is judged by the law to act upon an unavoidable necessity; but also he who, being assaulted in such a manner, and in such a place that he cannot go back, without

manifestly endangering his life, kills the other without retreating at all; and notwithstanding a person who retreats from an assault to the wall, gives the other wounds in his retreat, yet if he give him no mortal wound until he got thither, and then kill him, he is guilty of homicide, *se defendo*, only. But if the mortal wound was first given, then it is manslaughter. And an officer kills one who resists him in the execution of his office, and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all. But if a person, upon *malice propense*, strike another, and then fly to the wall, and there, in his own defense, kill the other, this is murder. Hereof there can be no accessaries, either before or after the act, because it is not done with a felonious intent, but upon inevitable necessity. (Grimke, 222.)

3d.—FELONIOUS HOMICIDE,

Is the killing of a human creature, of any age or sex, without justification or excuse.

Manslaughter—Is the unlawful killing of another without malice, either express or implied, which may be voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act.

Words of Provocation.—It has been shown that the most grievous words of reproach, contemptuous and insulting actions or gestures, or trespass against lands or goods, will not free the party killing from the guilt of murder, if upon such provocation a deadly weapon was made use of, or an intention to kill, or to do some great bodily harm, was otherwise manifested. But if no such weapon be used, or, intention manifested, and the party so provoked give the other a box on the ear, or strike him with a stick or other weapon not likely to kill, and kill him unluckily and against his intention, it will be only manslaughter. It is, indeed, said to have been held in one case, that words of menace of bodily harm are a sufficient provocation to reduce the offense of killing to manslaughter; but it has been considered that such words ought, at least, to be accompanied by some act denoting an immediate intention of following them up by an actual assault. But though words of slighting, disdain, or contumely, will not of themselves make such a provocation as to lessen the crime into manslaughter, yet it seems that if A give indecent language to B, and B thereupon strike A, but not mortally, and then A strike B again, and then B kill A, that this is but manslaughter. The stroke by A was deemed a new provocation, and the conflict a sudden falling out; and on these grounds the killing was considered as only manslaughter. (1st Russel, 486.)

Provocation by Assault.—When an assault is made with violence or circumstances of indignity upon a man's person, as by pulling him by the nose, and the party so assaulted kills the aggressor, the crime will be reduced to manslaughter, in case it appears that the assault was re-

sented immediately, and the aggressor killed in the heat of blood, the *furor brevis* occasioned by the provocation. So if A be passing along the street, and B meeting him, (*there being convenient distance between B and the wall,*) take the wall of him and justle him, and thereupon A kill B, it is said that such justling would amount to a provocation, which would make the killing manslaughter. And it again appears to have been considered, that where A. riding on the road, B whipped the horse of A out of the track, and then A alighted and killed B, it was only manslaughter. But, in the two last cases, it should seem that the first aggression must have been accompanied with circumstances of great violence or insolence; for it is not every trivial provocation which, in point of law, amounts to an assault, that will of course reduce the crime of the party killing to manslaughter. Even a blow will not be considered as sufficient provocation to extenuate in cases where the revenge is disproportioned to the injury, and outrageous and barbarous in its nature; but when the blow which gave the provocation has been so violent as to have reasonably caused a sudden transport of passion and heat of blood, the killing which ensued has been regarded as the consequence of human infirmity, and entitled to lenient consideration.

Thus, where a woman, after some words of abuse on both sides, gave a soldier a box on the ear, which the soldier returned, by striking her on her breast with the pommel of his sword; and the woman then running away, the soldier pursued, and stabbed her in the back with his sword. Holt, C. J., at first considered it to be murder; but, upon its coming out, in the progress of the trial, that the woman had struck the soldier with a patten on the face, with great force, so that the blood flowed, it was holden to be clearly no more than manslaughter. In this case, the smart of the soldier's wound, and the effusion of blood, might possibly have kept his indignation boiling to the moment of the act. (1 Russell, 487.)

Provocation by Detecting Adulterer.—When a man finds another in the act of adultery with his wife, and kills him in the first transport of passion, he is only guilty of manslaughter, and that in the lowest degree! for the provocation is grievous, such as the law reasonably concludes cannot be borne in the first transport of passion. But it has already been shown that the killing of an adulterer deliberately, and upon revenge, would be murder. (1st Russ., 488.)

Provocation of a slight kind, etc.—There are instances where slight provocations have been considered as extenuating the guilt of homicide, upon the ground, that the conduct of the party killing upon such provocations, might fairly be attributed to an intention to chastise rather than a cruel and implacable malice. But, in cases of this kind, it must appear, that the punishment was not urged with brutal violence, nor greatly disproportioned to the offense; and the instrument must not be such as, from its nature, was likely to endanger life. Thus, where A finding a trespasser on his land, in the first transport of his passion,

beat him, and unluckily happen to kill him, it was holden to be manslaughter; but it must be understood, that he beat him, not with a mischeivous intention, but merely to chastise him for the trespass, and to deter him from committing it again. And of the case of the keeper of a park, who, finding a boy stealing wood in his master's ground, tie him to a horse's tail, and beat him, upon which the horse running away the boy was killed; it is said, that if the chastisement had been moderate, it had been but manslaughter, for between persons nearly connected together by civil and national ties, the law admits the force of a provocation done to one to be felt by the other, and *a fortiori*, if the master had himself caught the trespasser, and beat him in such a manner as showed a desire only to chastise and prevent a repetition of the offense, but had unfortunately, and against his intent, killed him, it would only have been manslaughter. (*Ib.*)

Ducking a pickpocket.—When a person whose pocket has been picked, encouraged by a concourse of people, threw the pickpocket into an adjoining pond, in order to avenge the theft, by ducking him, but without any apparent intention of taking away his life, and the pickpocket was drowned, it was ruled to be only manslaughter; for though this mode of punishment is highly unjustifiable and illegal, yet the law respects the infirmities and imbecilities of human nature, when certain provocations are given. (1st Russ., 489).

Father Taking Up the Quarrel of his Son.—In a case where the prisoner's son having fought with another boy, and been beaten, ran home to his father all bloody, and the father presently took a cudgel, ran three-quarters of a mile and struck the other boy upon the head, upon which he died; it was ruled to be manslaughter, because done in a sudden heat and passion; but the true grounds of the judgment seem to have been, that the accident happened by a single stroke given in the heat of blood, with a cudgel, not likely to destroy, and that death did not immediately ensue. (*Ibid.*)

Sudden Quarrel.—If, upon a sudden quarrel, the parties fight upon the spot, or if they presently fetch their weapons, and go into a field and fight, and one of them be killed, it will be but manslaughter, because it may be presumed that the blood never cooled. And it must be observed, with regard to sudden rencounters, that when they are begun, the blood, previously too much heated, kindles afresh at every pass or blow; and in the tumult of the passions, in which mere instinct, self-preservation has no inconsiderable share—the voice of reason is not heard, therefore the laws in condecension to the infirmities of flesh and blood, has extenuated the offense. (1st Russ., 495.)

First Blow Immaterial, if Quarrel Sudden and Combat Equal.—A uses provoking language or behavior to B, and B strikes him, upon which a combat ensues, in which A is killed. This is holden to be manslaughter, for it was a sudden affray, and they fought upon equal terms; and in such combats upon sudden quarrels, it matters not who

gave the first blow But it would be otherwise if the terms were not equal, and if the party killing sought or took undue advantage, as if B in the foregoing case, had drawn his sword and made his pass at A, the sword of A being then undrawn, and thereupon A had drawn, and a combat had ensued, in which A had been killed; for this would have been murder, inasmuch as B. by making the pass, his adversary's sword being undrawn, showed that he sought his blood. And A's endeavor to defend himself, which he had a right to do, will not excuse B; but if B had first drawn, and forborne till his adversary had drawn too, it had been no more than manslaughter. (I Russell, 496.)

Death from Acts of Trespass.—It has been shown that when death ensues from an act done in the prosecution of a felonious intention, it will be murder; but a distinction is taken in the case of an act done with the intent only of committing a bare trespass, as if death ensues from such act, the offense will be only manslaughter. Thus, though if A shoot at the poultry of B, intending to steal them, and by accident kill a man, it will be murder. Yet, if he shoot at them wantonly, and without any such felonious intention, and accidentally kill a man, the offense will be only manslaughter. And any one who voluntarily, knowingly, and unlawfully intends hurt to the person of another, though he intends not death, yet, if death ensue, is guilty of murder or manslaughter, according to the circumstances of the nature of the instrument used, and the manner of using it, as calculated to produce great bodily harm or not. And if a man be doing an unlawful act, though not intending bodily harm to any one, as if he be throwing a stone at another's horse, and hit a person and kill him, it is manslaughter. But it seems that in cases of this kind, the guilt would rather depend upon one or other of these circumstances, either that the act might probably breed danger, or that it was done with a mischievous intent. (1st Russell, 527.)

Death happening from unlawful sports.—Where sports are unlawful in themselves, or productive of danger, riot, or disorder, so as to endanger the peace, and death ensue in the pursuit of them, the party killing is guilty of manslaughter. Such manly sports and exercises as tend to give strength, activity, and skill in the use of arms, and are entered into as private recreations amongst friends, are not, however, deemed unlawful sports; but prize fighting, public boxing matches, or any other sports of a similar kind, which are exhibited for lucre, and tend to encourage idleness by drawing together a number of disorderly people, have met with a different consideration. For in these last mentioned cases, the intention of the parties is not innocent in itself, each being careless of what hurt may be given, provided the promised reward or applause be obtained; and meetings of this kind have also a strong tendency in their nature to a breach of the peace. Therefore, where the prisoner had killed his opponent in a boxing match, it was holden that he was guilty of manslaughter, though he had been challenged to fight by his adver-

sary for a public trial of skill in boxing, and was also urged to engage by taunts, and the occasion was sudden (*Ibid.*)

Officers of justice acting improperly.—Though officers of justice are authorized to execute their duties in a proper and legal manner, notwithstanding any resistance which may be made to them; yet they should not come to extremities upon every slight interruption, nor unless there be a reasonable necessity. Therefore, where a collector, having distrained for a duty, laid hold of a maid servant who stood at the door to prevent the distress being carried away, and beat her head and back several times against the door post, of which she died; although the Court held her opposition to the officer to be a sufficient provocation to extenuate the homicide, yet they were clearly of opinion that he was guilty of manslaughter, in so far exceeding the necessity of the case. (1 Russell, 528.)

Correction in foro domestico.—Moderate and reasonable correction may properly be given by parents, masters and other persons having authority *in foro domestico*, to those who are under their care; but if the correction be immoderate or unreasonable, either in the measure of it, or in the instrument made use of for that purpose, it will be either murder or manslaughter, according to the circumstances of the case.

If it be done with a dangerous weapon, likely to kill or maim, due regard being always had to the age and strength of the party, it will be murder, but if with a cudgel or other thing not likely to kill, though improper for the purpose of correction, it will be manslaughter. (1st Russell, 532.)

Persons following their Common Occupations.—Where persons employed about such of their lawful occupations, from whence danger may probably arise to others, neglect the ordinary cautions, it will be manslaughter at least, on account of such negligence. Thus, if workmen throw stones, rubbish, or other things from a house, in the ordinary course of their business, by which a person underneath happens to be killed, if they did not look out and give timely warning to such as might be below, and there was even a small probability of persons passing by, it shall be manslaughter. It was a lawful act, but done in an improper manner. It has, indeed, been said, that if this be done in the streets of London, or other populous towns, it will be manslaughter, notwithstanding such caution be used. But must be understood with some limitation. If it be done early in the morning, when few or no people are stirring, and the ordinary caution be used, the party may be excusable; but when the streets are full, such ordinary caution will not suffice; for, in the hurry and noise of a crowded street, few people hear the warning, or sufficiently attend to it (1st Russell, 535.)

Punishment of Manslaughter.—The punishment of manslaughter was formerly branding, and forfeiture of goods and chattels, but since their abolition in this State, it is now punishable by fine and imprisonment.

Definition.—*Murder.*—Is the killing of any person with malice aforethought, either express or implied. (Gen. Stat., C. CXXVIII, Sec. 1, p. 709.)

Killing by Stabbing—Murder.—Whoever shall stab or thrust any person or persons that has not any weapon drawn, or that has not then first stricken the party which shall so stab or thrust, so as the person or persons so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, yet the party so offending, and being thereof convicted, shall suffer death as in the case of wilful murder: *Provided*, That nothing herein contained shall extend to any person who shall kill any person or persons in self-defense, or by misfortune, or in any other manner than as aforesaid; nor to any person who, in keeping and preserving the peace, shall chance to commit manslaughter, so as the said manslaughter be not committed wittingly, willingly and of purpose, under pretext and color of keeping the peace; nor shall extend to any person who, in chastising or correcting his child shall, besides his or their intent and purpose, chance to commit manslaughter. (*Ibid*, Sec. 3.)

Killing by Poisoning—Murder.—All wilful killing by poisoning of any person or persons, shall be adjudged, taken and deemed wilful murder of malice prepense; and the offenders therein, their aiders, abettors, procurers and counsellors, shall suffer death, as in other cases of wilful murder. (*Ibid*, Sec. 4.)

1st.—Of the Party Killing.
2d.—Of the Party Killed.
3d.—Of the Means of Killing.
4th.—Of the Malice.
5th.—Of the Aiders, Abettors and Accessaries.
6th.—Of the Place of Trial.
7th.—Punishment.

1st.—OF THE PARTY KILLING.

He must be of sound memory and discretion, for lunatics or infants are incapable of committing any crime unless in such cases where they show a consciousness of doing wrong, and of course a discretion or discernment between good and evil. (4th B. C., 195.)

The person committing the crime must be a free agent and not subject to actual force at the time the fact is done. Thus, if A by force take the arm of B in which is a weapon, and therewith kill C, A is guilty of murder, but not B. But if it be only a moral force put upon B as by threatening him with duress and imprisonment or even by an assault to the peril of his life, in order to compel him to kill C it is no legal excuse.

If, however, A procures B an idiot or lunatic, to kill C, A is guilty of

murder as principal, and B is merely an instrument. So if A lay a trap or pitfall for B whereby B is killed, A is guilty of the murder as a principal in the first degree, the trap or pitfall being only the instrument of death. If one persuade another to kill himself, the adviser is guilty of murder, and if the party takes poison himself by the persuasion of another, in the absence of the persuader, yet it is a killing by the persuader, and he is principal in it, though absent at the taking of the poison. And he who kills another upon his desire or command is, in the judgment of the law, as much a murderer as if he had done it merely of his own head. (1 Russell, 423.)

Same not guilty in Certain Cases.—On the principal that it is not murder in the party killing, if he act under the influence of force, certain juries have refused to convict slaves of murder, when the killing was by the command, in the presence and under fear of the master, and this idea seems to be sustained by the case of the State vs. Slater, sentenced by Judge Wild. (1st Hall's Journal, page 67, and also the opinion of Judge O'Neall in the case of the State vs. Crank, 2 Bailey, 76,) where it is said if a slave be forced by his owner against his will, to kill another, the slave acting without a will, but by his master's compulsion, would be the bloody instrument of his cruelty, but might be guilty of no legal offense. The master would be guilty of murder.

2d—THE PARTY KILLED.

Murder may be committed upon any person within the king's peace. Therefore to kill an alien enemy within the kingdom, unless it be in the heat and actual exercise of war, or to kill a Jew or outlaw, one attainted of felony, or one in a *præmunire*, is as much murder as to kill the most regular born Englishman. (1st Russell, 424.)

Children in the Mother's Womb.—An infant in its mother's womb not being in *rerum natura*, is not considered as a person who can be killed within the description of murder, and therefore if a woman being quick or great with child, take any potion to cause an abortion, or if another give her any such potion, or if a person strike her, whereby the child within her is killed, it is not murder nor manslaughter.

But by a recent Statute, any person wilfully or maliciously administering poison, to cause or procure the miscarriage of any woman, then being quick with child, is guilty of a capital offense, and any person administering medicines to women not quick with child, with intent to procure miscarriage, is guilty of felony. When a child, having been born alive, afterwards died by reason of any potions or bruises it received in the womb, it seems always to have been the better opinion, that it was murder, in such as administered or gave them. (1st Russell, 424, 6th S. L., 158.)

3D.—THE MEANS OF KILLING.

The killing may be effected by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome. But there must be some external violence, or corporal damage to the party; and therefore, when a person, either by working upon the fancy of another, or by harsh and unkind usage, puts him into such passions of grief or fear that he dies suddenly, or contracts some disease which causes his death, the killing is not such as the law can notice.

If a man however, does an act, the probable consequence of which may be, and eventually is death, such killing may be murder; although no stroke be struck by himself, and no killing may have been primarily intended; as when a person carried a sick father against his will, in a severe season, from one town to another, by reason whereof he died; or when a harlot, being delivered of a child, left it in an orchard covered only with leaves, in which condition it was killed by a kite; or where a child was placed in a hog stye, where it was devoured. In these cases and also where a child was shifted by parish officers, from parish to parish, till it died from want of care and sustenance, it was considered that the acts so done wilfully and deliberately, were of *malice prepense*. (1st Russell, 425.)

Forcing a person to do an act which is likely to produce his death, and which does produce it, is murder; and threats may constitute such force. The indictment charged first, that the prisoner killed his wife by beating; secondly, by throwing her out of the window, and thirdly and fourthly, that he beat her and threatened to throw her out of the window and to murder her, and that by such threats she was so terrified, that, through fear of his putting his threats into execution, she threw herself out of the window and of the beating and bruises received by the fall, died. There was strong evidence that the death of the wife was occasioned by the blows she received before her fall; but Heath, J., Gibbs, J., and Bayley, J., were of opinion, that if her death was occasioned partly by the blows and partly by the fall, yet if she was constrained by her husband's threats of further violence, and from a well grounded apprehension of his doing such further violence as would endanger her life, he was answerable for the consequences of the fall, as much as if he had thrown her out of the window himself; the prisoner however, was acquitted, the jury being of opinion that the deceased threw herself out of the window from her own intemperance, and not under the influence of the threats. (*Ib.*)

By Negligence and Harsh Usage Towards an Apprentice.—Upon the same principles, when there is found to be actual malice, or a wilful disposition to injure another, or an obstinate perseverance in doing an act necessarily attended with danger, without regard to the consequences; as if a master, by premeditated negligence, or harsh usage

cause the death of his apprentice, it will be murder. Thus, where the prisoner, upon his apprentice returning to him from Bridewell, whither he had been sent for misbehaviour, in a lousy and distempered condition, did not take that care of him which his situation required, and which he might have done, not having suffered him to be in a bed on account of the vermin, but having made him lie on the boards for some time without covering, and without common medical care; and the death of the apprentice, in the opinion of the medical men who were examined, was most probably occasioned by his ill treatment in Bridewell, and the want of care when he went home; and the medical persons inclined to think, that if he had been properly treated when he came home, he might have recovered; the Court, under these circumstances, and others in favor of the prisoner, left it to the jury to consider whether the death of the apprentice was occasioned by the ill treatment he received from his master after returning from Bridewell, and whether that ill treatment amounted to evidence of malice; in which case they were to find him guilty of murder. And in a more modern case, a prisoner was found guilty of murder in causing the death of his apprentice, by not providing him with sufficient food and nourishment. The prisoner, Charles Squire, and his wife, were both indicted for the murder of a boy who was bound as a parish apprentice to the prisoner, Charles; and it appeared, upon the trial, that both the prisoners had used the apprentice in a most cruel and barbarous manner, and had not provided him with sufficient food and nourishment; but the surgeon who opened the body deposed that in his judgment, the boy died from debility, and for want of proper food and nourishment, and not from the wounds, etc., which he had received. Lawrence, J., upon this evidence, was of opinion that the case was defective as to the wife, as it was not her duty to provide the apprentice with sufficient food and nourishment, she being the servant of her husband, and so directed the jury, who acquitted her; but the husband was found guilty and executed. (1st Russ., 426.)

By Savage Animals.—If a man has a beast that is used to do mischief, and he, knowing it, suffers it to go abroad, and it kills a man, this has been considered by some as manslaughter in the owner; and it is agreed by all that such a person is guilty of a very gross misdemeanor; and if a man purposely turn such an animal loose, knowing its nature, it is with us (as in the Jewish law) as much murder as if he had incited a bear or a dog to worry people; and this, though he did it merely to frighten them, and make what is called sport. (1 Russ., 427.)

Time of Death.—It is agreed that no person shall be adjudged by any act whatever to kill another, who does not die thereof within a year and a day after the stroke received, or cause of death administered, in the computation of which, the whole day upon which the hurt was done is to be reckoned the first. (1st Russ., 428.)

Treatment of Wounds.—Questions may occasionally arise, as to the treatment of the wound or hurt received by the party killed. Upon this subject it has been ruled, that if a man give another a stroke, not in itself so mortal, but that with good care he might be cured; yet, if the party die of this wound within a year and a day, it is murder, or other species of homicide, as the case may be; though if the wounds or hurts be not mortal, and it shall be made clearly and certainly to appear that the death of the party was caused by ill applications by himself or those about him, of unwholsome salves or medicines, and not by the wound or hurt, it seems that this is no species of homicide But when a wound, not in itself mortal, for want of proper applications, or from neglect, turns to a gangrene or a fever, and that gangrene or fever is the immediate cause of the death of the party wounded, the party by whom the wound is given is guilty of murder or manslaughter, according to the circumstances; for though the fever or gangrene, and not the wound, be the immediate cause of the death, yet, the wound being the cause of the gangrene or fever, is the immediate cause of the death, *causa causati*. Thus, it was resolved, that if one gives wounds to another, who neglects the care of them, or is disorderly and doth not keep that rule which a person wounded should do, yet if he die, it is murder or manslaughter, according to the circumstances; because if the wounds had not been, the man had not died, and therefore, neglect or disorder in the person who received the wounds, shall not excuse the person who gave them. (*Ibid.*)

Killing a Person Laboring Under Disease.—If a man be sick of some disease, which, by the course of nature might possibly end his life in half a year, and another gives him a wound or hurt which hastens his death, by irritating and provoking the disease to operate more violently or speedily, this is murder or other homicide, according to the circumstances, in the party by whom such wound or hurt was given; for the person wounded does not die simply *ex visitatione Dei*, but the death is hastened by the hurt which he received, and it shall not be permitted to the offender to appertain his own wrong. (1 Russ., 429.)

4th.—OF THE MALICE.

Malice may be either Express or Implied.—Malice may be either express or implied by law. Express malice is, when one person kills another with a sedate, deliberate mind and formed design, such formed design being evidenced by the external circumstances discovering the inward intention; as lying in wait, antecedent measures, former grudges, and concerted schemes to do the party some bodily harm. And malice is implied by law from any deliberate, cruel act committed by one person against another person, however sudden Thus when a man kills another suddenly, without any, or without a considerable provocation, the law implies malice, for no person unless of an abandoned heart, would

be guilty of such an act upon a slight or no apparent cause. So if a man wilfully poisons another, in such a deliberate act the law presumes malice, though no particular enmity can be proved. And where one is killed in consequence of such a wilful act, as shows the person by whom it is committed to be an enemy of all mankind, the law will infer a general malice from such depraved inclination to mischief, and it should be observed as a general rule, that all homicide is presumed to be malicious, and, of course, amounting to murder, until the contrary appears, from circumstances of alleviation, excuse, or justification, and that is incumbent upon the prisoner, to make out such circumstances to the satisfaction of the Court and jury, unless they arise out of the evidence produced against him. It should also be remarked, that when the defense rests upon some violent provocation, it will not avail, however grievous such provocation may have been, if it appears that there was an interval of reflection, or a reasonable time for the blood to have cooled before the deadly purpose was effected, and provocation will be no answer to proof of express malice; so that if, upon a provocation received, one party, deliberately and advisedly denounce vengeance against the other, as by declaring that he will have his blood, or the like, and afterwards carry his design into execution, he will be guilty of murder; although the death happened so recently after the provocation as that the law might, apart from such evidence of express malice, have imputed the act to unadvised passion. But where fresh provocation intervenes between preconceived malice and the death, it ought clearly to appear that the killing was upon the antecedent malice; for if there be an old quarrel between A and B, and they are reconciled again, and then, upon a new and sudden falling out A kills B, this is not murder. It is not to be presumed that the parties fought upon the old grudge, unless it appear from the whole circumstances of the fact; but if upon the circumstances it should appear that the reconciliation was but pretended or counterfeit, and that the hurt done was upon the score of the old malice, then such killing will be murder. When knowledge of some fact is necessary to make a killing murder, those of a party who have the knowledge, will be guilty of murder, and those who have it not, of manslaughter only. If A assault B, of malice, and they fight and A's servant come in aid of his master, and B be killed, A is guilty of murder; but the servant, if he knew not of A's malice, is guilty of manslaughter only. (1 Russell, 421.)

As to what provocation will be sufficient to reduce the killing to manslaughter, we have already spoken under that head.

5TH.—AIDERS, ABETTORS AND ACCESSARIES.

In order to make an abettor to a murder or manslaughter principal in the felony, he must be present, aiding and abetting the fact committed. The presence, however, need not always be an actual standing by within

sight or hearing of the fact; for there may be a constructive presence, as when one commits a murder, and another keeps watch or guard at some convenient distance. But a person may be present, and, if not aiding or abetting, be neither principal nor accessary; as if A happen to be present at a murder, and take no part in it, nor endeavor to prevent it, or to apprehend the murderer, this strange behaviour though highly criminal, will not of itself render him either principal or accessary. (1st Russell, 431.)

Persons Present may be Guilty of Different Degrees of Homicide.—If several persons are present at the death of a man, they may be guilty of different degrees of homicide, as one of murder, and another of manslaughter; for if there be no malice in the party striking, but malice in an abettor, it will be murder in the latter, though only manslaughter in the former. So if A assault B of malice, and they fight, and A.'s servant come in aid of his master, and B be killed, A is guilty of murder; but the servant, if he knew not of A's malice is guilty of manslaughter only. (*Ibid.*)

Of Accessaries Before the Fact.—He that counsels, commands or directs the killing of any person, and is himself absent at the time of the fact being done, is an accessary to murder before the fact

And though the crime be done by the intervention of a third person, he that procures it to be committed is an accessary before the fact So that if A bid his servant hire somebody, no matter when, to murder B, and furnish him with money for that purpose, and the servant procure C, a person whom A never saw or heard of to do it, A is an accessary before the fact. If A advises B to kill another, and B does it in the absence of A, in such case B is principal, and A is accessary in the murder, and this holds, even though the party killed be not in *rerum natura* at the time of the advice given; so that if a man advise a woman to kill her child as soon as it shall be born, and she kills it when born in pursuance of such advice, he is an accessary to the murder. (1st Russell, 432.)

Cases where the Crime is the Direct and Immediate Effect of the Command or Counsel of the Accessary.—It is a rule, that he who in anywise commands or counsels another to commit an unlawful act, is accessary to all that ensues upon that unlawful act. Thus if A commands B to beat C, and B beat him, so that he dies, A being absent, B is guilty of murder as principal, and A is accessary; the crime having been committed in the execution of a command, which naturally tended to endanger the life of another. And *a fortiori*, therefore, if a man command another to rob any person, and he, in robbing him, kills him, the person giving such command is as much an accessary to the murder as to the robbery which was commanded; and it is also said, that if one command a man to rob another and he kill him in the attempt, but do not rob him, the person giving such command is guilty of the murder, because it was the direct and immediate effect of an act done in the execution of a command to commit a felony. (*Ibid.*)

Cases where the Crime is not the Direct and Immediate Effect of the Command or Counsel of the Person Charged as Accessary.—But if the crime committed be not the direct and immediate effect of the act done in pursuance of the command; or if the act done varies in substance from that which was commanded, the party giving the command cannot be deemed an accessary to the crime. Thus if A persuade B to poison C, and B accordingly give poison to C, who eats part of it and gives the rest to D, who is killed by it, A is guilty of a great misdemeanor, only in respect to D, but is not an accessary to his murder; because it was not the direct and immediate effect of the act done in pursuance of the command. And if A counsel or command B to beat C with a small wand or rod, which would not in all human reason cause death, and B beat C with a great club, or wound him with a sword, whereof he dies, it seems that A is not accessary; because there was no command of death, nor of anything that could probably cause death, and B departed from the command in substance, and not in circumstance. But if the crime committed be the same in substance with that which was commanded, and vary only in some circumstantial matters, as where a man advises another to kill a person in the night, and he kills him in the day; or to kill him in the field, and he kills him in the town; and to poison him, and he stabs him or shoots him; the person giving such command is still accessary to the murder, for the substance of the thing commanded was the death of the party killed, and the manner of its execution is a mere collateral circumstance. (1st Russell, 433.)

6TH.—PLACE OF TRIAL.

When Injury Inflicted Within the Limits of the State.—When any person shall be struck, wounded, poisoned, or otherwise injured or ill-treated within the limits of this State, and shall die beyond the limits of the State, whether on the high seas or elsewhere, the person so striking, wounding, poisoning, or otherwise causing death as aforesaid, shall be subject to indictment, trial and punishment in the County in which said stroke, wound, poisoning, or other injury or ill-treatment was committed, in all respect the same as if the death had occurred in the said County. (Gen. Stat., c. CXXVIII., Sec 19, p. 712.)

Inflicted Beyond Limits of State.—When any person within the limits of this State shall inflict an injury on any person, who, at the time said injury is inflicted, is beyond the limits of the State, or where any person beyond the limits of this State shall inflict an injury on any person, at the time, within the limits of this State, and such injury shall cause the death of the person injured, in either case the person causing such death, shall be subject to be indicted, tried and punished. In the first case, in the County of this State where the person inflicting the injury was, at the time when the same was inflicted; and, in the second case, in the County in which it was received; and the procedure and

punishment shall be in all respects the same as if both parties were within the said County at the time said injury was inflicted, and the homicide had been in all respects completed in said County. (*Ibid*, Sec. 20.)

Where Parties are in Different Counties, &c.—Where an injury is inflicted by any person within the bounds of one County of this State, on a person within the bounds of another County, and death shall ensue therefrom, and the party dies within the State, indictment, trial and punishment, shall be the same as if the homicide had been committed altogether within the County where the party dies; and where the party dies without the jurisdiction of this State, indictment, trial and punishment, shall be the same as if the homicide had been completed in the County where the injury causing death was received. (*Ibid*, Sec. 21.)

When any person shall be struck, wounded, poisoned, or otherwise injured in one County, and die thereof in another, any inquisition or indictment thereon found by jurors of either County, shall be as good and effectual in law as if the stroke, wound, poisoning, or other injury had been committed and done in the same County where the party shall die. And the person or persons guilty of such striking, wounding, poisoning, or other injury, and every accessory thereto, either before or after the fact, shall be tried in the County where such indictment shall be found, and, if convicted, punished in the same mode, manner and form, as if the deceased had suffered such striking, wounding, poisoning, or other injury and death, in the County where such indictment shall be found. (17 Stat., 336; Amend. to Gen. Stat., 712.)

7th.—PUNISHMENT.

Whoever is guilty of murder shall suffer the punishment of death. (Gen. Stat., Sec. 2, 709; 14th Stat., 175.)

Manslaughter, or the unlawful killing of another without malice, express or implied, shall be punishable by hard labor in the Penitentiary, not exceeding thirty years, nor less than two years. (*Ibid.*)

HORSES.

(*See Cattle.*)

HORSE STEALING.

Whoever shall be indicted and found guilty of stealing a horse, mare, gelding, colt, filly, mule or ass, above the value of twenty dollars, shall be adjudged and deemed guilty of felony. (Gen. Stat., c. CXXIX., Sec. 13, p. 716.)

HOUSE BREAKING.

Hereafter, every person who shall break and enter, or shall break with intent to enter, in the day time, any dwelling house or other house, the breaking and entering of which, if done in the night time, would, by law, constitute burglary, with intent to commit a felony, or other crime of a less grade, shall be held guilty of felony, and be punishable, at the discretion of the Court, by imprisonment in the County Jail or Penitentiary, for a term not exceeding one year. (17 Stat., 60.)

HUNTING.—GENERAL PROVISIONS.

Hunting at Further Distance than Seven Miles from Residence of Proprietor.—If any person, at any time whatsoever, shall hunt or range on any lands whatsoever, without the consent of the proprietor, at a greater distance from his or her place of residence than seven miles, every such person so offending shall forfeit and pay the sum of ten dollars for every such offense. (Gen. Stat., c. LXXIV., Sec. 15, p 403.)

Penalty for Hunting with Fire in the Night Time.—Any person or persons who shall hunt with fire in the night time, for every such offense, shall forfeit and pay a sum not exceeding ten dollars, and for every deer so killed, a sum not exceeding twenty-five dollars; and for every horse or head of neat cattle or other stock of any kind, a sum not exceeding fifty dollars. (*Ibid*, Sec. 16.)

Fines, &c.—How Recovered and Disposed Of.—All the penalties and forfeitures mentioned in the preceding Section, shall and may be recovered before any Trial Justice in the County where any of the said offenses shall be committed, and when received, shall be divided and paid, one-half to and for the use of the poor of the County where the offense shall be committed, and the other half to the person who will inform for the same; and the oath of one creditable witness, or the confession of the party accused, shall be allowed as sufficient evidence to convict the offender, by every Trial Justice before whom information shall be made of any of the offenses aforesaid: *Provided*, that the owners of any lands shall prosecute for any unlawful hunting and ranging on his or her lands, the oath of such owner shall be sufficient evidence to convict the offender; but in that case, the whole penalty shall go to the use of the poor of the County. (*Ib*, Sec. 17.)

In case fines are not paid.—In case any person or persons so convicted shall refuse or neglect to pay such fine, then it shall and may be lawful, and the Trial Justice, before whom he is convicted, is hereby required to commit such person or persons to the common jail in the

county where the offender or offenders shall have committed the crime, there to remain without bail for a term not exceeding three months, for unlawfully hunting with fire in the night time, and for a term not exceeding two months for violations of the Statute in regard to hunting deer, (*see deer*) and also to hunting on lands without the consent of proprietor, at a greater distance from his or her place of residence than seven miles. (*Ibid*, S. 18.)

Liable to action by law.—Any person or persons who shall hunt with fire in the night time, or kill any horse or neat cattle, or other stock of any kind, the property of another person, shall be liable to a civil action by the person so aggrieved, in additon to the above penalties. (*Ibid*, S. 19.)

Reward for informing of fire hunters.—Any person who will give information to a Trial Justice of any fire hunter, shall, on his conviction, be entitled to thirty dollars, to be paid out of the public treasury. (*Ibid*, S. 20.)

Non-residents not to hunt.—It shall not be lawful for any non-resident of this State to use a gun, set a trap or decoy, or to employ any other device for killing or taking deer, turkeys, ducks or other game, nor to set a trap, seine or net, or draw or use the same, or any other contrivance for taking or killing fish, within the territorial limits of this State. (*Ibid*, S. 21, p. 404.)

Penalty.—Every person who shall offend against the provisions of the preceeding Section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be liable to a penalty not exceeding two hundred dollars, and imprisonment not exceeding three months, nor less than one month, for each and every violation of any of the said provisions. (*Ibid*, S. 22.)

Non-residents may hunt by authority of landlord.—All persons shall be deemed and taken as non-residents, within the meaning of the last two Sections, who shall not have had their actual domicil in this State for one year preceding their use of any of the implements of the chase of fishery forbidden by the twenty-first Section of this chapter. But nothing herein shall be construed prohibiting any land holder from authorizing any person to hunt or shoot ducks or other game, or to fish within the boundaries of his own land. (*Ibid* S. 23.)

HUSBAND AND WIFE.

Not competent or compellable to give evidence for or against the other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy or adultery. Nor shall they be compellable to disclose any confidential communication made by one to another during their marriage. (Code Sec. 415, Subd. 2 and 3.) (*See evidence.*)

INFANT.

By an infant is meant any one, whether male or female, who is under the age of twenty-one.

1st.—When and for what Crimes they may be punished.
2nd.—Of the liability of Infants on contracts for necessaries, and other contracts
3rd.—How an Infant may sue or be sued
4th.—Of the liability of an Infant for Torts.
5th.—Of the privileges and disabilities of Infants.

1st.—WHEN THEY MAY BE PUNISHED, &c.

Infants committing misdemeanors.—The full age of man or woman, by the law of England, is twenty-one years; under which age, a person is termed an infant, and is exempted from punishment in some cases of misdemeanors and offenses that are not capital But the nature of the offense will make differences which should be observed. Thus, if it be any notorious breach of the peace, as a riot, battery, or the like, an infant above the age of fourteen is equally as liable to suffer as a person of the full age of twenty-one; and if an infant judicially perjure himself in point of age, or otherwise, he shall be punished for the perjury and he may be indicted for cheating with false dice, &c., but if the offense charged by the indictment be a mere *non feazance*, (*unless it be of such a thing as the party be bound to by reason of tenure or the like, as to repair a bridge, &c.*), then in such cases, he shall be privileged by his non age, if under twenty one, though above fourteen years; because *laches* in such a case, shall not be imputed to him. (1 Russ., 2.)

It is said that if an infant at the age of eighteen years, be convicted of a *disseisin* with force, yet he shall not be imprisoned; and the law is said to be, that though an infant at the age of eighteen or even fourteen, by his own acts may be guilty of a forcible entry, and may be fined for the same, yet he cannot be imprisoned, because his infancy is an excuse by reason of his indiscretion; and it is not particularly mentioned in the Statute against forcible entries, that he shall be committed for such fine.

An infant cannot, however, be guilty of a forcible entry or *disseisin*, by barely commanding one, or by assenting to one to his use; because every command or assent of this kind by a person under such incapacity, is void; but an actual entry by an infant into another's freehold, gains the possession and makes him a *disseisor*. (*Ibid.*)

Infants Committing Capital Crimes.—With regard to capital crimes, the law is more minute and circumspect; distinguishing with greater nicety the several degrees of age and discretion. Though the capacity of doing ill or contracting guilt, is not so much measured by years and

days, as by the strength of the delinquent's understanding and judgment. But within the age of seven years, an infant cannot be punished for any capital offense, whatever circumstances of a mischievous discretion may appear; for *ex-presumptione juris*, such an infant cannot have discretion, and against this presumption no averment shall be admitted.

On the attainment of fourteen years of age, the criminal actions of infants are subject to the same modes of construction as those of the rest of society; for the law presumes them at those years to be *doli capaces*, and able to discern between good and evil, and therefore subjects them to capital punishment as much as if they were of full age

But during the interval between fourteen years and seven, an infant shall be *prima facie* deemed to be *doli incapax*, and presumed to be unacquainted with guilt. Yet this presumption will diminish with the advance of the offender's years and will depend upon the particular facts and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction; but if it appear to the Court and jury that the offender was *doli capax*, and could discern between good and evil, he may be convicted and suffer death. Thus it is said, that an infant of eight years old may be guilty of murder, and shall be hung for it; and where an infant between eight and nine years old was indicted and found guilty of burning two barns, and it appear upon examination that he had malice, revenge, craft, and cunning, he had judgment to be hanged, and was executed accordingly. (*Ibid*, 3.)

An infant of the age of nine years, having killed an infant of the like age, confessed the felony, and upon examination, it was found that he had hid the blood and the body.

The Justices held that he ought to be hanged, but they respited the execution that he might have a pardon. Another infant of the age of ten years, who had killed his companion and hid himself was, however, actually hanged, upon the ground that it appeared by his hiding that he could discern between good and evil, and *malitia supple ætatem*, and a girl of thirteen was burnt for killing her mistress. (*Ibid.*)

In the case of rape, the law presumes that an infant under the age of fourteen years is unable to commit the crime, and therefore it seems he cannot be guilty of it; but this is upon the ground of impotency rather than the want of discretion, for he may be a principal in the second degree, as aiding and assisting in this offense as well as in other felonies, if it appears by sufficient circumstances that he had a mischievous discretion (*Ibid.*)

The following is an important case as to the capability of an infant of ten years old being guilty of the crime of murder, and as to the expediency of visiting such an offender with capital punishment:

Case of Murder by a Boy of ten years old.—At Bury, Summer Assizes, 1748, William York, a boy of ten years of age, was convicted before Lord Chief Justice Willes, for the murder of a girl about five

years, and received sentence of death, but the Chief Justice, out of regard to the tender years of the prisoner, respited execution until he should have an opportunity of taking the opinion of the rest of the Judges, whether it was proper to execute him or not upon the special circumstances of the case, which he reported to the Judges at Sergeant's Inn, in Michaelmas Term following. The boy and girl were parish children, put under the care of a parishioner, at whose house they were lodged and maintained. On the day the murder happened, the man of the house and his wife went out to their work early in the morning and left the children in bed together. When they returned, from work the girl was missing, and the boy being asked what was become of her, answered that he had helped her up and put on her clothes and that she was gone he knew not whither. Upon this, strict search was made in the ditches and pools of water near the house, from an apprehension that the child might have fallen into the water.

During this search, the man under whose care the children were, observed that a heap of dung near the house had been newly turned up, and upon removing the upper part of the heap, he found the body of the child about a foot's depth under the surface, cut and mangled in a most horrid and barbarous manner; upon this discovery, the boy, who was the only person capable of commiting the act, and was left at home with the child was charged with the fact, which he stifly denied. When the coroner's jury met, the boy was again charged, but persisted still to deny the fact; at length, being closely interrogated, he fell to crying, and said he would tell the whole truth. He then said, that the child had been used to foul herself in bed; that she did so that morning, (which was not so, for the bed was searched and found to be clean,) that therefore he took her out of the bed and carried her to the dung heap, and with a large knife, which he found about the house, cut her in the manner the body appeared to be mangled, and buried her in the dung heap, placing the dung and straw that was bloody under the body, and covering it up with what was clean; and having done so, he got water and washed himself as clean as he could. The boy was the next morning, carried before a neighboring justice of the peace, before whom he repeated his confession, with all the circumstances he had related to the coroner and his jury. The justice of the peace very prudently deferred proceeding to a commitment, until the boy should have an opportunity of recollecting himself. Accordingly, he warned him of the danger he was in, if he should be thought guilty of the fact he stood charged with, and admonished him not to wrong himself; and then ordered him into a room, where none of the crowd that attended should have access to him. When the boy had been some hours in this room, where victuals and drink were provided for him, he was brought a second time before the justice, and then he repeated his former confession, upon which he was committed to jail. On the trial, evidence was given of the declarations before mentioned, to have been made before the coro-

ner and his jury, and before the justice of the peace, and of many declarations to the same purpose, which the boy made to other people after he came to jail, and even down to the day of his trial, for he constantly told the same story in substance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with some other circumstances tending to corroborate the confessions, he was convicted. Upon this report of the Chief Justice, the judges, having taken time to consider of it, unanimously agreed: 1st. That the declarations stated in the report were evidence proper to be left to the jury. 2nd. That supposing the boy to have been guilty of this fact, there were so many circumstances stated in the report, which were undoubtedly tokens of what Lord Hale calls a mischievous discretion, that he was certainly a proper subject for capital punishment, and ought to suffer; for it would be of very dangerous consequence to have it thought that children may commit such atrocious crimes with impunity (1st Russ., 4.)

That there are many crimes of the most heinous nature, such as (*in the present case*) the murder of young children, poisoning parents or masters, burning houses, &c., which children are very capable of committing, and which they may, in some circumstances, be under strong temptations to commit; and, therefore, though the taking away the life of a boy ten years old might savor of cruelty, yet as the example of that boy's punishment might be the means of deterring other children from the like offenses, and as the sparing the boy, merely on account of his age, might probably have quite a contrary tendency, in justice to the public, the law ought to take its course, unless there remained any doubt touching his guilt. In this general principle, all the Judges concurred; but two or three of them, out of great tenderness and caution, advised the Chief Justice to send another reprieve for the prisoner, suggesting that it might possibly appear, on further inquiry, that the boy had taken this matter upon himself at the instigation of some person or other, who hoped by this artifice to screen the real offender from justice. Accordingly, the Chief Justice granted one or two more reprieves, and desired the justice of the peace who took the boy's examination, and also some other persons, in whose prudence he could confide, to make the strictest inquiry they could into the affair, and report to him. At length he, receiving no further light, determined to send no more reprieves, and to leave the prisoner to the justice of the law at the expiration of the last; but before the expiration of that reprieve, execution was respited till further order, by warrant from one of the Secretaries of State; and at the Summer Assizes, 1757, the prisoner had the benefit of His Majesty's pardon, upon condition of his entering into the sea service. (*Ibid.*)

How far Statutes extend to Cases of Infancy.—It is said that an act making a new felony does not extend to an infant under the age of discretion, namely, fourteen years old; and that general statutes which give corporal punishment are not to extend to infants. But this must

be understood, where the corporal punishment is, as it were, but collateral to the offense, and not the direct intention of the proceeding against the infant for his misdemeanor; in many cases of which kind the infant under the age of twenty-one shall be spared, though possibly the punishment may be enacted by Parliament. (*Ibid*, 5.)

2d.—OF THE LIABILITY OF INFANTS ON CONTRACTS FOR NECESSARIES, AND OTHER CONTRACTS.

For Necessaries—As to contracts for necessaries made by infants, it is to be observed, that (*strictly speaking*) all contracts made by infants are either void or voidable, because a contract is the act of the understanding which, during their state of infancy, they are presumed to want; yet civil societies have so far supplied that defect, and taken care of them, as to allow them to contract for their benefit and advantage, with power, in most cases, to recede from and vacate it when it may prove prejudicial to them; but in this contract for necessaries they are absolutely bound, and this likewise is in benignity to infants; for if they were not allowed to bind themselves for necessaries, nobody would trust them, in which case they would be in worse circumstances than persons of full age. Therefore, it is clearly agreed that an infant may bind himself to pay for his necessary meat, drink, apparel, physic, and such other necessaries, and likewise his good teaching and instruction, whereby he may profit himself afterwards. This binding means by parol; in fact, for necessaries, if there is not an actual promise, the law implies a promise, but the infant will not be bound by any bond, note, or bill, which he gives, though for necessaries; therefore, a tradesman's best security will be the actual or implied promise. With respect to schooling, &c., it must be in cases where the credit was given, *bona fide*, to the infant. But where an infant is *sub potestate parentis*, and living in the house with his parents, he shall not then be liable even for necessaries. (2d Tomlin's, 183.)

It must appear that the things were actually necessary, and of reasonable prices, and suitable to the infant's degree and estate, which regularly must be left to the jury; but if the jury find that the things were necessary, and of reasonable price, it shall be presumed they had evidence for what they thus find; and they need not find particularly what the necessaries were, nor what price each thing was; also, if the plaintiff declares for other things, as well as necessaries, or alleges too high a price for those things that are necessaries, a jury may consider of these things that were really necessary, and of their intrinsic value, and proportion their damages accordingly. (*Ibid.*)

If an infant promises another, that if he will find him meat, drink, and washing, and pay for his schooling, that he will pay £7 yearly, an action upon the case lies upon this promise; for learning is as necessary as other things; and though it is not mentioned what learning this was, yet it shall be intended what was fit for him, till it be shown to the con-

trary on the other part; and though he to whom the promise was made does not instruct him, but pays another for it, the promise of repayment thereof is good, if it appears that the learning, meat, drink, and washing could not be afforded for a less sum than £7. (*Ibid.*)

If an infant be a mercer, and hath a shop in a town, and there buys and sells, and contracts to pay a certain sum to J. G., for wares sold to him by J. G, to re-sell, yet he is not chargeable upon this contract, for this trading is not immediately necessary *ad victum et vestitutum;* and if this were allowed, infants might be infinitely prejudiced, and buy and sell, and live by the loss. (*Ibid.*)

And as the contract of an infant for wares, for the necessary carrying on of his trade, whereby he subsists, shall not bind him, so neither shall he be liable for money which he borrows to lay out for necessaries; therefore, the lender must, at his peril, lay it out for him, or see that it is laid out in necessaries; so that if one lends money to an infant, who actually lays it out in necessaries, yet this will not bind the infant, nor subject him to an action; for it is upon the lending that the contract must arise, and after that time there could be no contract raised to bind the infant, because after that he might waste the money, and the infant applying it afterwards for necessaries will not, by matter *ex-post facto*, entitle the plaintiff to an action. (*Ibid*, 184.)

Although an infant shall be liable for the necessaries, yet if he enters into an obligation with a penalty for payment thereof, this shall not bind him, for the entering into a penalty can be of no advantage to the infant. But a bond or single bill for the exact amount of necessaries furnished, will be valid. (*Ibid.*)

If an infant becomes indebted for necessaries, and the party takes a bond from the infant, this shall not drown the simple contract, because the bond has no force. Necessaries for an infant's wife are necessaries for him; but if provided only in order for the marriage, he is not chargeable, though he use them after. An infant shall be liable for the nursing his child. (*Ibid.*)

What are necessaries for an infant, is a question of law for the Court. How much, and of what quality, must depend upon the infants pecuniary circumstances and of these the jury are to judge. (1st McC. 572.)

Lodging, clothing, food, medicine and education, are necessaries to every infant; such articles therefore, as came under such hands, must be allowed; but liquor, pistols, powder, saddles, whips, bridles, fiddles, fiddle strings, &c., are not to be allowed (*Ibid.*)

If a contract be made by an infant and an adult, they cannot both be sued thereon, but the action should be brought against the adult only. (3rd Mc., 6.)

An infant who lives with, and is properly maintained by her parents, cannot bind herself to a stranger for necessaries; and where daughters live with their mother, it should be presumed that they were properly maintained by their parent until the contrary be proved; for the mother

being the best judge of what is necessary for them, should be consulted before credit be given them. (*Ibid.*)

Other Contracts.—As to acts *in pais*, infants are regularly allowed to rescind and break through all contracts *in pais*, made during minority, except only for schooling and necessaries, be they never so much to their advantage, and the reason hereof is the indulgence the law has thought fit to give infants who are supposed to want judgment and discretion in their contracts and transactions with others, and the care it takes of them in preventing their being imposed upon or over-reached by persons of more years and experience. (2d Tomlins, 185.)

And for the better security and protection of infants herein, the law has made some of their contracts absolutely void, *i. e.*, all such in which there is no apparent benefit or semblance of benefit to the infant, but as to those from which the infant may receive benefit and which were entered into with more solemnity, they are only voidable, that is, the law allows them when they come of age and are capable of considering over again what they have done, either to ratify and affirm such contracts or to break through and avoid them. (*Ibid.*)

If an infant draws a bill of exchange, yet he shall not be liable on the custom of merchant, but he may plead infancy in the same manner that he may to any other contract of his. (*Ibid.*)

But a person is liable on a bill of exchange, accepted after he was of age, though drawn while he was an infant. (*Ibid*)

Though a promise by an infant will not bind him unless for necessaries, yet he shall take advantage of any promise made to him, though the consideration were his promise, when an infant. And an infant plaintiff has been allowed to recover on mutual promises of marriage. . (*Ibid.*)

The trading contract of an infant is not void, but he may enforce it at his election. (*Ibid.*)

Contracts with infants are void or voidable. Those which are voidable only impose a qualified obligation, and if the infant after coming of age elect to perform, it will be enforced against him. (4th McC. 241.)

A very slight circumstance showing his assent to the contract after the infant comes of age, will confirm the contract. (*Ibid.*)

If he purchases land and continues in possession after he comes of age, and if he buys a horse, which he retains and uses after he becomes twenty-one, it will amount to a confirmation. (*Ibid.*)

When an infant gave his note for a horse, payable to A or bearer, and kept the horse after he became twenty-one, and sold him, it was held a confirmation, and that the bearer of the note to which it had been transferred might recover it. (*Ibid.*)

A sale to an infant by a person of full age, divests the title of the latter, nor will his retaining or afterwards coming in possession of the property as guardian of the infant, authorize him to rescind the sale. (1st Bailey, 320.)

The property of a defendant who has come of age may be levied on whilst it remains in the possession of his guardian, if the latter has any claims upon the property for advances to his ward, his remedy is in equity. (*Ibid.*)

An infant partner confirming the contract of partnership after coming of age, subjects himself to all the liabilities of the firm incurred during his minority, and when an infant partner, after attaining full age, transacted the business of the firm, received their monies and paid their debts, held that these acts, unexplained, amounted to a confirmation of the partnership, and made him liable for a debt of the firm contracted during his infancy, although he was ignorant of the existence of the debt at the time of such confirmation, and had, on being informed of it refused to pay it. (2d Hill, 479.)

3d.—HOW AN INFANT MAY SUE AND BE SUED.

An infant cannot be sued but under the protection, and joining the name of his guardian; for he is to defend him against all attacks as well by law as otherwise; but he may sue either by his guardian, or *prochein amy*, his next friend, who is not his guardian.

This *prochein amy* may be any person who will undertake the infant's cause, and it frequently happens that an infant, by his *prochein amy*, institutes a suit against a fraudulent guardian. (2d Toulins, 185.)

An infant is to prosecute a suit by his guardian or best friend, though the term used is *prochein amy*, *i. e*, next friend; but he cannot defend by such next friend, but must defend only by a guardian, because the law supposes that when he demands or sues for anything, it is for his benefit.

The power for infants to sue by *prochein amy*, was first introduced by the Statute, Western 2. (*Ibid.*)

If an infant be joined with others, in suing in the right of another, the action may be brought by an attorney, for they all make but one person in law. (*Ibid*)

The plaintiff's attorney should apply to the defendant to name a guardian, and if he does not, in six days, the plaintiff may apply to the Court, who will oblige him to do it. (*Ibid.*)

None but a solvent person should be admitted *prochein amy* to prosecute the action of an infant plaintiff; but the Court of Appeals will not receive the appointment of a *prochein amy*, whose solvency is doubtful; for the person admitted may be removed at any stage of the suit, on proof of his insolvency, and another substituted, unless security is given for the payment of costs. (1st Bailey, 123.)

After pleading to the merits, in an action brought by an infant, who declares by guardian, the defendant cannot require proof at the trial, that the guardian had been duly admitted. (2d Bailey, 461.)

A plea to the merits is an admission of the plaintiff's right to sue in the character in which he declares. The objection goes to his disability

and cannot be taken advantage of, but by plea in abatement. *Secus*, where he declares in his own right and the character in which he claims, makes part of his title to the thing for which he sues. (*Ibid.*)

One who prosecutes a suit for an infant, as guardian, is concluded by a recovery from afterwards claiming the subject matter of the suit, in his own right, against the same defendant; and therefore, after the liability of the defendant to the infant has been established, evidence of a prior right, in the guardian, is irrelevant and inadmissible. (*Ibid.*)

If an infant sue without *prochein amy*, and the defendant plead issuably, he waives the objection of form. The objection of infancy in the plaintiff, can only be made by plea in abatement. (1 Spears, 212.)

Where the proof of infancy in the plaintiff comes from the defendant, under the general issue, the Court cannot *in invitum* order a non-suit on this proof. (*Ibid.*)

The case of McDaniel *vs.* Nicholson, 2 Mills' Const., Rep., 344, examined and held not a case of authority for what it purports to decide. (*Ibid.*)

A judgment irregularly obtained against an infant, may be set aside after he has attained full age, on motion and rule; and the fact of infancy, must be tried *per pais*, and not by inspection. (2 Rich., 324.)

A judgment against an infant, who has not appeared by guardian, is erroneous. (*Ibid.*)

The Court is not bound, after the infant has attained full age, to set aside such a judgment, on the mere fact that he was an infant when it was obtained, but may consider lapse of time, the conduct of the defendant, and other circumstances, as having confirmed the judgment and rendered the interference of the Court improper. Semble. (*Ibid.*)

The proper practice in such cases, seems to be on affidavit of the defendant's infancy, to order a rule to show cause, on the return of which the judgment may be set aside, or an issue made up to try the fact of infancy, or such other material fact as the case may present. (*Ibid.*)

4th.—OF AN INFANT'S LIABILITY FOR TORTS.

An infant is liable in respect of torts committed by him, as for slander or battery; and in detinue for goods delivered to him for a particular purpose, and which he has failed to return. (2d Tomlins, 186.)

But a plaintiff cannot convert an action founded on a contract into a tort, so as to charge an infant defendant; therefore, where the plaintiff declared at defendant's request, he had delivered a mare to defendant, to be moderately ridden, and that defendant maliciously, &c., rode the said mare so that she was damaged, &c., the Court of K. B., held, that defendant might plead his infancy in bar, the action being confounded on a contract. (*Ibid.*)

An infant at the age of discretion, is liable in an action on the case, for the embezzlement of goods entrusted to his care. (4th McCord, 387.)

An infant is not bound by a submission to an award, and a note given

by him, in pursuance of an award, is void, though the matter submitted was a tort committed by the infant.

An infant is liable for torts, but it does not follow that his contracts in compensation for torts are valid. (3d McC., 257.)

5th.—OF THE DISABILITIES AND PRIVILEGES OF INFANTS.

An infant, it seems, is capable of such offices as do not concern the administration of justice, but only require skill and diligence; and then he may either exercise them himself when of the age of discretion, or they may be exercised by deputy; such as the office of jailor, &c. An infant cannot be a juror. (2d Tomlins, 180.)

The executor or executrix shall not take upon himself or herself, the administration of any will or devise, unless he or she be of the full age of twenty-one years. (6th S. L., 237, Sec. 2.)

An infant has five full years after his title to land accrues, within which to bring his action, notwithstanding the Statute of Limitations had commenced to run in the time of the ancestor, under whom he claimed by decent. (Rose *vs.* Daniel, 2 Tr. Con. Rep., 549.)

Minors, (by the Act of 1788,) have five years after their coming of age, to prosecute their claims, if to land, and four years if to personal property; and it is the same, whether at the time of their coming of age, they were within or without the State.

If the plaintiff commence his action for the recovery of land, within the five years, and such action be non-suited, discontinued, or in any other way be let fall, he, or any one claiming under him, may, yet, nevertheless, within two years of such non-suit, &c., commence his second action for the recovery of such lands, and it will not be barred by the Statute. (1st McCord, 555.)

INJURY.

(*See Homicide.*)

To person or property, civil action for. (See Courts of Trial Justices.)

INN-KEEPERS.

1st.—The Duties of.
2d.—The Rights of.

1st.—THE DUTIES OF.

An inn-keeper is bound to take in and receive all travelers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper

diligence. He is liable for the goods that are brought within the inn. (8 Co. 32; Jones' Bailm., 91.)

A delivery of the goods into the custody of the inn-keeper, is not, however, necessary, in order to make him responsible; for although he may not know anything of such goods, he is bound to pay for them if they are stolen or carried away, even by an unknown person. (8 Co., 32; 14 John R., 175; Bell's Com., 469.)

If he receive the guest, the custody of the goods may be considered as an accessory to the principal contract; and the money paid for the apartments as extending to the care of the box and portmanteau. (Jones' Bailm., 94; Story, Bailm, S. 470; 1 Bl. Com., 430; 2 Kent, Com., 458 to 463.)

An inn-keeper is liable for all losses which might have been prevented by ordinary care. And, it seems, whenever it be doubtful, whether ordinary care has been used or not, the presumption is against the bailee. If he do not rebut the presumption of a want of ordinary care, arising from the loss of the goods bailed, he is responsible. (Newson, Ads. Axon. 1 McCord, 509.)

When the horse of a guest is put into a stable, which was very open, but which had a bar to one door and a lock and key to the other, although the key was delivered to the servant of the guest, yet the inn-keeper is liable for a horse stolen out of his stable; and it seems it would have been the same, had the stable been properly constructed.

Ordinary cases a question for the jury. (*Ibid.*)

The inn-keeper will be excused whenever the loss has occurred through the fault of the guest. (Story, Bailm., S. 483; 2 Kent, Com. 461.)

2D.—RIGHTS OF INN-KEEPERS.

The inn-keeper is entitled to a just compensation for his care and trouble, in taking care of his guest and his property, and to enable him to obtain this, the law invests him with some peculiar privileges, giving him a lien upon the goods of the guest brought into the inn, and, it is said, upon the person of his guest for his compensation. (2d Bailey, 452.)

But the horse of the guest can be detained only for his own keeping, and not for the boarding and personal expenses of the guest. (2d Bailey, 452; Bac. Ab., p. 1.)

The landlord may also bring an action for the recovery of his compensation.

Where one has a complete and enforcible lien on the property of his debtor, a promise of a third person to pay the debt, on condition that the property under the lien is given up, is not within the Statute of Frauds. An inn-keeper has a lien on the goods of his guest, for the amount of his bill. (1st Rich., 213.)

INQUEST.

(*See Coroner.*)

INTEREST.

1st.—On What Debts Interest is Recoverable.
2d.—Computation of Interest.
3d.—What will Stop Interest.
4th.—Of Usury.

1st.—ON WHAT DEBTS INTEREST IS RECOVERABLE.

(1.) Liquidated demands.

It is a general rule that any note, acknowledgment, or memorandum in writing, fixing with precision the amount due, and the time of payment, will be such a liquidation as will carry interest. (Elliott ads. Minott, 2d McC., 125.)

So an order upon a principal, by his agent, for a sum agreed for in favor of a carrier for freight due, will carry interest from its date. (*Ibid.*)

In an action for refusing to comply with the terms of a sale at auction, the jury may allow as damages, the difference between the sale and re-sale, and interest thereon. (Blackwood & Brenan, ads. Leman, Harper, 219.)

The auctioneer may be considered the agent of both parties, and his entry a liquidation of the demand. (*Ibid.*)

Where there is a written lease to pay a certain sum annually, if it be not paid annually, it carries interest. (Dorrell *vs.* Stephens, 4th McC., 59.)

Where the lease is for a term of years, with an annual rent, if the tenant holds over the term, without anything being said as to a new contract, the law presumes that he holds, subject to the same annual rent as stipulated in the contract, and if interest is recoverable on the annual arrears of the written lease; it will also be recoverable on the subsequent annual arrears. (*Ibid.*)

Where the amount of plaintiff's demand is liquidated in writing and a day appointed for payment, the Jury have no discretion to refuse interest on the debt from that day. (*Ibid.*)

(2.) UNLIQUIDATED DEMANDS.

Unliquidated demands do not bear interest except in cases where the defendant has been guilty of fraud or imposition. (Conyers vs. Magrath, 4th McC., 392.)

No interest is recoverable on open or book account, or any unliquidated demand previous to the finding of a Jury. (Skirving vs. Executors of Stobo, 2d Bay, 233.)

Interest is not recoverable on an open account, though a time be fixed for payment, unless there be an agreement to pay interest. An agreement may be implied, as from a promise to give a note or for the usage of trade. (Knight vs. Mitchel, 2 Treadway, 668.)

Interest may be recovered (*in an action for money had and received*) or money where there is proof, or where from circumstances it can be inferred that it has been employed, or wherever it has been obtained by fraud, extortion, oppression, etc. (Goddard adv. Bulow, 1st N. and McC., 45.)

The liquidation of an account by a note, though it should have been by the note of a third person, unless expressly received in payment, does not destroy the open account. Interest has been too often allowed upon a balance of accounts after it has been acknowledged to be now disputed. (Barelli, Torre & Co. vs. Brown & Moses, 1st McC., 449.)

Interest may be recovered upon account for money had and recovered, under all cases of certain or liquidated damages. (*Ibid.*)

Interest is not allowed on a demand for work or labor done, goods sold, or any other account not liquidated, in writing, even though the money be payable at a day certain. (Fairand vs. Bouchell, Harper, 83.)

Interest is not receivable on a verbal contract, on which the defendant agreed to pay the plaintiff $100 for rendering a service. (Farr vs. Farr 1st Hill, 393.)

Nor will a custom at a particular store to allow interest unless expressly or impliedly sanctioned by the party dealing, have the effect of an agreement to pay interest (Searson vs. Heyward & Co., 1 Spear, 249.)

Where an open account, with interest, was recovered under such proof a new trial was ordered, unless the plaintiff entered a remitter as to the interest. (*Ibid.*)

2ND—COMPUTATION OF INTEREST.

Where a person has entered into a bond conditioned for the payment of four per cent. interest on certain legacies, all the legatees came of age and as each legatee came of age to pay him his proportion of the principal, the legatees are entitled to seven per cent. (*the legal interest of this State*) from the time the principal came due. (Gaillard ads. Bull, 1 N. and McC., 67.)

Where an action is brought on a bond made in a foreign country and payable there, the interest of that country, and not the interest of the country in which the action is brought is recoverable. (*Ibid.*)

Where a party contracts to pay a sum of money, with interest thereon, on a given day, when the day arrives the interest becomes principal, and

if the debt be not paid, the aggregate of principal and interest then bears interest for the future. (Doig vs. Cathcart, 3d Rich , 125.)

On a bond conditioned to pay several sums by different instalments, "without interest, but with interest if not punctually paid," the money not having been punctually paid, it was held, that the interest was recoverable from the date of the bond, and not from the time the instalments respectively became due; and the penalty became forfeited by the non-payment of the first instalment. (Wakefield *vs.* Beckley, 3d McC., 480.)

The condition of the bonds was "to pay the full and just sum of $4,000 on or before 31st January, 1821, with lawful interest to be paid annually, to commence from this date: held, that the annual interest unpaid became principal and bore interest. (Singleton *vs.* Lewis, 2d Hill, 408)

3d.—WHAT WILL STOP INTEREST.

A tender of the principal sum due will stop interest. (Petrie *vs.* Smith, 1st Bay, 115)

But it must be an actual tender, and not a mere expression of willingness to pay. (Hood *vs.* Huff, 2d McCord, 159.)

The intervention of war will stop interest on a debt due to an alien enemy. (3d McC., 340.)

4th.—OF USURY.

By A. A. 1877, No 296, it enacted, "that from and after the passage of this Act no greater rate of interest than seven (7) per cent. per annum shall be charged, taken, agreed upon, or allowed upon any contract arising in this State for the hiring, lending or use of money or other commodity. (Sec. 1.)

"That no person or corporation lending or advancing money or other commodity upon a greater rate of interest than is provided for in Section 1 of this Act, shall be allowed to recover in any Court of this State any portion of the interest so unlawfully charged, and that the principal sum, amount or value so lent or advanced, without any interest, shall be deemed and taken by the Courts of this State to be the true legal debts or measure of damages, to all intents and purposes whatsoever, to be recovered without costs. (Sec. 2d 16 Stat., 325.)

INTERMARRYING OF RACES.

1.—Whom Prohibited.
2.—Punishment Therefor.

1.—WHOM PROHIBITED.

It shall be unlawful for any white man to intermarry with any woman of either the Indian or negro races, or any mulatto, mestizoe, or half-breed, or for any white woman to intermarry with any person other

than a white man, or for any mulatto, half-breed, negro, Indian or mestizoe to intermarry with a white woman, and any such marriage, or attempted marriage, shall be utterly null and void and of none effect. (17 Stat. 3, Sec. 1.)

2.—PUNISHMENT THEREFOR.

Any person who shall violate the first section of this Act, or any one of the provisions thereof, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars, or imprisonment for not less than twelve months, or both, in the discretion of the Court. (*Ibid*, Sec. 2.)

That any clergyman, minister of the gospel, magistrate or other person authorized by law to perform the marriage ceremony, who shall knowingly and wilfully unite in the bonds of matrimony any persons of different races, as above prohibited, shall be liable to the same penalty or penalties provided in the preceding section. (*Ibid*, Sec. 3.)

INVENTORY.

(*See Attachments, also Distress.*)

JAIL AND JAILORS.

1st.—Who Shall be Keepers of Jails.
2d.—What Prisoners Jailors Bound to Receive and Keep.
3d.—How they shall be Kept.
4th.—How Supported.
5th.—How Delivered.
6th—Of Escapes.
7th.—Punishment of Jailors for Maltreatment of Prisoners.
8th.—Injuries to Jails.

1st—WHO SHALL BE KEEPERS OF JAILS.

Sheriff to have Custody of Jail.—The Sheriff shall have the custody of the jail in his County, and if he appoint a jailor to keep it, he shall be liable for him. (Gen. Stat, C. CXLIV, Sec. 1, p. 758.)

To be Liable for Jailor.—Every Sheriff in the State who does not live in the jail shall employ a proper and discreet person as jailor, who shall live within the same, and who is hereby prohibited from using the house for any other purpose than that for which it was designed by law. The appointment of such jailor shall be in writing, a copy of which shall be deposited in the office of the Clerk of the Circuit Court of the County wherein such jailor is appointed. (*Ibid*, Sec. 2 and 3.)

In case of a vacancy in the office of Sheriff, the Clerk of Court shall take charge of the jail and prisoners until his successor is elected or appointed. (*Ib*, C. XX, Sec. 4, p. 157.)

2D.—WHAT PRISONERS THE JAILOR IS BOUND TO RECEIVE AND KEEP.

All Persons Committed by Authority of Law—The Sheriff or jailor shall receive and safely keep in prison any person delivered or committed to either of them, according to law, without taking anything for the receipt. (*Ib.*, C. CXLIV, Sec 1, p. 658.)

All persons committed by the Coroner. (*Ib.*, Sec 6.)

To Keep Prisoners of the United States.—The Sheriffs or jailors in the several Counties of this State shall keep in safe custody all such prisoners as may be committed to them under the authority of the United States, until such persons are discharged by due course of law of the United States, under the like penalties as in case of prisoners committed under the authority of this State, and upon the terms of the resolution of the Congress of the United States, at their session begun and holden on the fourth day of March, Anno Domini one thousand seven hundred and eighty-nine. (*Ibid*, Sec. 4.)

Lunatics, etc., not to be Confined in Jail.—No pauper, lunatic, idiot, or epileptic shall hereafter be confined for safe-keeping in any jail; and, if any such person shall be imprisoned, under and by virtue of any legal process, it shall be the duty of the Sheriff, in whose custody he may be, to obtain his discharge as speedily as possible, and send him forthwith to the Asylum, according to law, at the expense of the County within whose limits he shall have gained a settlement. (*Ibid.* Sec. 8.)

Removal of Prisoners on Destruction of Jail.—In all cases where any person shall be apprehended, or in confinement according to law, in any County in this State, wherein the jail is, or hereafter may be, destroyed by fire or other accident, he shall be committed to the jail nearest the one destroyed, for safe-keeping; and the several jailors in this State, who now are, or hereafter may be, keepers of the jails that may be destroyed as aforesaid, are authorized and required to receive and safely keep such person. (*Ibid*, Sec. 13.)

3D.—HOW PRISONERS SHALL BE KEPT.

Felons and Debtors to be Lodged Apart.—Sheriffs and jailors shall keep prisoners for debt, in cases of fraud, in separate apartments of the jail, and the officer herein offending shall be liable to an action of the party aggrieved, and also to an indictment; and, on conviction, shall be punished as for a misdemeanor. (*Ibid*, Section 5.)

Not be Removed Except, etc.—Penalty for.—If any person or persons, citizens of this State, shall be committed to any prison, for any criminal or supposed criminal matter, the said person shall not be re-

moved from thence unless it be by *habeas corpus*, or some other legal writ; or where he is sent, according to law, to any common workhouse or house of correction; or when he is removed from one prison or place to another within the same County, in order to stand his trial or discharge; or in case of sudden fire or infection, or other necessity, on pain that the person signing any warrant for such removal, and person executing the same, shall forfeit to the prisoner or party aggrieved the sum of two thousand five hundred dollars. (*Ibid*, C. CXVIII, Sec. 13, 15, 17 and 18.)

Not to Discriminate in Treatment of Prisoners.—Sheriffs or jailors making any discrimination in the treatment of prisoners, is a misdemeanor, and, upon conviction thereof, the party convicted shall be fined not less than twenty-five dollars, and be imprisoned for not less than one month, nor more than twelve months. (*Ibid*, C. CXLIV, Sec. 11 and 12.)

May Impress Guard and Call out Posse Comitatus.—When any person accused of a capital offense shall be in custody, and the Sheriff acting by himself or his regular deputy, shall have cause to suspect that such person may be rescued, or will probably effect his escape, the Sheriff may impress a sufficient guard for securing and keeping safely such prisoner, so long as it may be the duty of the Sheriff to keep said prisoner in jail, or his custody. And the Sheriff, by himself or his regular deputy, shall have power to call out the *posse comitatus* to his assistance, whenever he is resisted, or has reasonable grounds to suspect and believe that such assistance will be necessary in the service or execution of process in any criminal case; and any person refusing to act as such guard, or to assist as one of the *posse comitatus* in the service or execution of such process, when required by the Sheriff, shall be liable to be indicted therefor, and, upon conviction, shall be fined and imprisoned at the discretion of the Court (*Ibid*, Sec. 14.)

If the jailor shall license his prisoner to jail, and for a time, and then to come again, or to go abroad with a keeper, though he come again, yet these are escapes. (Dalt., C 170.)

And hereupon it is lawful for the jailor to hamper a felon with irons, to prevent his escape. (1 H. H., 601; Dalt., C. 170.)

And it is said that a jailor is in no way punishable for keeping even a debtor in irons. (2 Hawk., 152.)

If the jailor keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the jailor by the common law; and this is the cause, that if the prisoner die in jail, the Coroner ought to set upon him; and if the death was owing to cruel and oppressive usage on the part of the jailor, or any officer of his, it will be deemed wilful murder in the person guilty of such duress. (3 Inst., 91; Frost, 321, 322.)

But if a criminal, endeavoring to break the jail, assault his jailor, he may be lawfully killed by him in the affray. (1 Hawk., 71; 1 H. H., 496.)

For jailors and their officers are under the same special protection that other ministers of justice are; and, therefore, if in the necessary discharge of their duty, they meet with resistance, whether from prisoners in civil or criminal suits, or from others in behalf of such prisoners, they are not obliged to retreat as far as they can with safety, but may freely and without retreating, repel force with force; and if the party so resisting happeneth to be killed, this on the part of the jailor, or his officer, or any person coming in aid of him, will be justifiable homicide. On the other hand, if the jailor, or his officer, or any person coming in aid of him, should fall in the conflict, this will amount to wilful murder in all persons joining in such resistance; it is homicide committed in defiance of the justice of this State. (Frost, 321.)

County to furnish Blankets and Bedding for Prisoners.—It shall be the duty of the County Commissioners in this State to furnish, at all times, blankets and such other bedding as shall be necessary for prisoners confined in jail in their respective Counties; and prisoners confined on a criminal charge shall be provided with at least two blankets in the winter season. (Gen. Stat., C. CXLIV., Sec. 16.)

4TH.—HOW SUPPORTED.

Plaintiff Liable for Maintenance of Debtor.—When any person shall be taken on *mesne* or final process in any civil suit, and from inability to pay the demand, debt or damages, or find bail, if committed to the jail, and such person has no lands, tenements, goods, chattels, or *choses in action*, whereby his maintenance in jail can be defrayed, the plaintiff, or person at whose instance such party shall be imprisoned, shall pay and satisfy the same; and if such person, or his attorney, shall refuse or neglect, after ten days' previous notice, to pay, or give security to pay the same, when demanded, the Sheriff or Jailor in whose custody such prisoner is, may discharge him from such confinement: *Provided, however*, That such prisoner shall, before he is discharged, render, on oath, a schedule of all his estate, and assign the same. *Ibid*, C. CXXIV, Sec. 11, p. 698.)

The maintenance of prisoners in all criminal cases, is at the expense of the State, where they are acquitted; or being convicted, are discharged from inability to pay costs. (*Ibid*, C. CXLII, Secs. 2, 3 and 6.)

5TH.—HOW PRISONERS SHALL BE DELIVERED.

Every Sheriff shall make a return to every Court of General Sessions of his County, on the first day of the term, of the name of every prisoner and the time of his or her commitment, whether civil or criminal. (*Ibid*, C. CXLIV., Sec. 9.)

A jailor must not disobey a writ of *habeas corpus*, for want of his fees; but the Court will not turn the prisoner over till the jailor be paid all his fees. (2 Hawk., 151.)

6TH.—OF ESCAPES.

Person Committed on Civil Process.—If any Sheriff or his Deputy shall permit any prisoner committed to his custody on *mesne* or final process, in any civil action, to go or be without the prison walls without lawful authority, or if any Sheriff or his Deputy suffer such prisoner to go or be at large out of the rules of the prison, (*except by some writ of habeas corpus or rule of Court, which rule shall not be granted but by motion in open Court,*) any such going and being out of the prison walls, or prison rules, as the case may be, shall be adjudged and deemed an escape. If any Sheriff or his Deputy shall, after one day's notice in writing, given for that purpose, refuse to show any prisoner committed to his charge to the plaintiff at whose suit such prisoner was committed, or his attorney, such refusal shall be adjudged to be an escape: *Provided*, That the Sheriff shall discharge a defendant in custody on *mesne* process in a civil case where the plaintiff is non-suited. (Gen. Stat., C. XX, Sec. 37.)

Liable for Negligent Escape on Mesne or Final Process.—He shall be liable for the negligent escape of any prisoner on mesne or final process to such damages as the plaintiff may have sustained. *Provided*, that the insolvency of the prisoner shall not mitigate the damages below the amount sufficient to carry costs. (*Ibid.*, Sec 40.)

Punishable as for Escape of Prisoner.—If any sheriff, deputy sheriff, jailor or other officer, wilfully suffer a prisoner in his custody, under conviction or under any criminal charge, to escape, he shall suffer the like punishment and penalties, as the prisoner suffered to escape was sentenced to, or would be liable to suffer, upon conviction of the crime or offense wherewith he stood charged (*Ibid*, Sec. 41, p. 165; *Ibid*, C. CXXXI., Sec. 15, p. 726.)

May Retake an Escape.—It shall be lawful for the sheriff, deputy sheriff or jailor to re-take on Sunday, as on any other day, and at Court, Muster, or any other place, any prisoner who has escaped. (*Ib.*, Sec. 23.)

7TH.—PUNISHMENT OF JAILOR FOR MALTREATMENT OF PRISONERS.

By Stat. 14, Ed. 3, C. 10. If any jailor by duress or imprisonment, makes any prisoner that he hath in ward, to become an approver or appellor against his will, it shall be felony in the jailor. And a jailor may be discharged and fined for barbarously misusing his prisoners. (1 Russ., 140.)

If a prisoner dies from cruel and oppressive usage on the part of the jailor or any officer of his, it will be deemed wilful murder in the person guilty of such duress. The person guilty of such duress will be the party liable to prosecution, because though in a civil suit the principal is answerable in damages to the party injured through the default of the deputy, yet in capital prosecution, the sole object of which is the punish-

ment of the delinquent, each man must answer for his own defaults. (*Ib.*, 459.)

8TH.—OFFENSES AGAINST JAILS.

If any person or persons shall erect, or cause to be erected, any dwelling-house, out-house or other building, or shall erect or cause to be erected, any kind of fence, wall, or paling of any kind, on any public lot or square, whereon the jails and courthouses in the several counties are erected, or who may hereafter hold, occupy or use any house, out-house, or other building erected on such square or lot, he, she or they shall, for any such offense, upon being thereof legally convicted by indictment, be fined in a sum not less than one hundred dollars, nor more than one thousand dollars *Provided*, that the jailors of the respective counties who reside in the jails, shall not be subject to such penalty for erecting or using such buildings or fences for their private accommodation. (Gen. Stat., C. CXL. IV., Sec. 20, p. 761.)

Injury.—If any person or persons shall wilfully injure or destroy any part of any court house or jail in this State, or the enclosures of the same, or any part thereof, such person or persons shall be liable to be indicted for such offense, and upon conviction, fined and imprisoned at the discretion of the Court. (*Ibid.*, Sec. 21.)

JURY.

Selected in criminal causes, in the same manner as in civil cases

(*See Courts of Trial Justices, Subd.* 6)

JUDGMENT.

(*See Courts of Trial Justices, Subd.* 9.)

JURISDICTION.

(See Attachment, Arrest and Bail, Courts of Trial Justices, &c. Whether a matter falls within the jurisdiction of one, or requires two Trial Justices, refer to particular subject inquired of.)

1ST.—GENERAL JURISDICTION AND POWERS.
2ND.—REMEDY WHERE JURISDICTION IS EXCEEDED.

1st.—GENERAL JURISDICTION AND POWERS.

(1st.) Civil jurisdiction. (See Courts of Trial Justices.)
(2d.) Criminal Jurisdiction.

Trial Justices shall have and exercise, within their respective Counties, all the powers, authority and jurisdiction, in criminal cases, as follows:

1. Jurisdiction of all offenses which may be subject to the penalties of either fine or forfeiture not exceeding one hundred dollars, or imprisonment in the jail or work house not exceeding thirty days; and may impose any sentence within those limits, singly or in the alternative. (Gen. Stat., C. XXV., Sec. 9.)

2. May punish by fine, not exceeding one hundred dollars, or imprisonment in the jail or house of correction, not exceeding thirty days, all assaults and batteries, and other breaches of the peace, when the offense is not of a high and aggravated nature, requiring, in their judgment, greater punishment. (*Ibid*, Sec. 10.)

Where an assault and battery is "of a high and aggravated nature," the *warrant* of the Trial Justice should so charge it, either in general terms or in words descriptive of such an offense. (State vs. McKetterick, Mss. Decision Supreme Court.)

3. May cause to be arrested all affrayers, rioters, disturbers and breakers of the peace, and all who go armed offensively to the terror of the people, and such as utter menaces or threatening speeches, or otherwise dangerous and disorderly persons. Persons arrested for any of said offenses shall be examined by the Trial Justice before whom they are brought, and may be tried before him, and if found guilty, may be required to find sureties for the peace, and be punished within the limits above prescribed, or when the offense is of a high and aggravated nature, they may be committed or bound over for trial before the Court of General Sessions. (*Ibid*, S. 11) (*Ibid*, C. 137, S. 4, p. 744.)

4. Shall have jurisdiction of larcenies by stealing of the property of another, of money, goods or chattels, or any bank note, bond, promissory note, bill of exchange or other bill, order or certificate, or any book of accounts for or concerning money or goods due or to become due, or to be delivered, or any deed or writing containing a conveyance of land or other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record, if the property stolen does not exceed twenty dollars in value. (*Ibid*, S. 12.)

5. Shall have jurisdiction of the offenses of buying, receiving or aiding in the concealment of stolen goods and other property where they would have jurisdiction of the larceny of the same goods or property. (*Ib.* S. 13.)

6. Jurisdiction of the offenses of obtaining property by any false pretense, or by any privy or false token, or by any game, device, slight of hand, pretensions to fortune telling, trick or other means by the use of cards or other implements or instruments where they would have jurisdiction of a larceny of the same property, and may punish said offenses the same as larceny. (*Ib.*, S. 14.)

7. They shall cause to be arrested all persons found within their counties charged with any offense, and persons who after committing any offense within the county escape out of the same, examine into treason, felonies, grand larcenies, high crimes and misdemeanors, and

commit or bind over for trial those who appear to be guilty of crimes or offenses not within their jurisdiction, and punish those guilty of such offenses within their jurisdiction. (*Ibid*, S. 15.)

8. Trial Justices residing within the limits of the City of Charleston are vested with jurisdiction to try, determine and impose the penalties authorized by Ordinance of the City Council of Charleston. (*Ibid*, S. 18,)

9. Any Trial Justice shall be authorized and required to command all persons who, in his view, may be engaged in violations or disorderly conduct, to the disturbance of the peace, to desist therefrom, and to arrest any such person who shall refuse obedience to his command, and to commit to jail any such person who shall fail to enter into sufficient recognizance either to keep the peace or to answer to an indictment, as the Trial Justice may determine.

In like manner, he shall arrest and commit, if necessary, any person who, in his view, shall perpetrate any crime or misdemeanor whatsoever. In making such arrest, the Trial Justice shall have power to command any Constable, bystander, or the *posse comitatus*, as the emergency may require ; and any person who shall refuse to aid in such arrest, when required by the Trial Justice. shall be liable to indictment as for a misdemeanor. Whenever there shall be an indictment for any offense committed in his view, the Trial Justice shall be the prosecutor, and he shall bind in recognizance all necessary witnesses. ((*Ibid*, Sec. 22.)

10. Any Trial Justice, according to the established forms of proceeding for offenses against this State, (*at the expense of the United States, and to be tried by such Court of the United States as may have cognizance of the offense*,) may order the arrest, imprisonment or bail of a person charged with a crime or offense against the United States, alleged to have been committed within this State ; and a copy of the process shall be returned as speedily as may be, into the office of Clerk of such Court, together with the recognizances of the witnesses for their appearance to testify in the case, which recognizances any Trial Justice may require, on pain of imprisonment ; and, if such offender be committed within a County in which the offense cannot be tried, the Trial Justice ordering the arrest shall issue his warrant for the removal of offender and witnesses to the proper County. (*Ibid*, Sec. 46.)

2d.—REMEDY WHEN JURISDICTION IS EXCEEDED.

When a Court of Trial Justice exceeds its jurisdiction, the remedy is by a writ of prohibition from the Circuit Court.

Prohibition lies where a subordinate Court exercising judicial power, errs on a question of jurisdiction. (Strob *vs.* Hopkins, Dudley, 101.)

It lies also, when, by the exercise of its jurisdiction, the Inferior Court defeat a legal right. (2 Chit., Pr., 255.)

Prohibition will not be to restrain the judgment of an Inferior Court,

on the ground that they committed an error of judgment in refusing to receive legal evidence. (Leonard's Case, 8 Rich., 113.)

Nor will it be to restrain the execution of a sentence in a criminal case. The remedy is by appeal. (Strob *vs.* Nathan, 4 Rich., 514.)

KIDNAPPING.

Sailors.—Any attempt, by fraud or force, to ship against his will, any person as a seaman, on board any vessel in any port of this State, is hereby declared a misdemeanor, to be punished by fine and imprisonment, at the discretion of the Court. (Gen. Stat., C. CXXVIII, S. 14, p. 711.)

Minors.—If any person shall procure and carry without the limits of the State, any minor or person under the age of twenty-one years, without the consent of the parents or guardian of such minor, such person shall, upon conviction thereof, be fined in a sum not less than one hundred, nor more than five hundred dollars or be imprisoned in the Penitentiary of the State, for a period of not less than one year. (*Ibid*, S. 15.)

KILNS.

(*See Burning.*)

LABOR.

(*See Lien.*)

Party Furnishing, to Have Lien on Building.—Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used in the erection, alteration, or repair of any building or structure, upon any real estate, by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully for, such owner, in procuring or furnishing such labor or materials, shall have a lien upon building or structure, and, upon the interest of the owner thereof in the lot of land upon which the same is situated, to secure the payment of the debt so due to him, and the costs which may arise in enforcing such lien. (Gen. Stat., C. CXX, S. 7, p. 350.)

LABORERS—PROTECTION OF.

Contracts to be Read to Laborers and Witnessed.—All contracts made between owners of land, their agents, administrators or executors, and laborers, shall be witnessed by one or more disinterested persons, and, at the request of either party, be duly executed before a Trial Justice, whose duty it shall be to read and explain the same to the parties. Such contracts shall clearly set forth the conditions upon which the laborer or laborers engaged to work, embracing the length of time, the amount of money to be paid, and when; if it be on shares of crops, what portion of the crop or crops. (Gen. Stat., C. CIII, S. 9, 490.)

Crops to be Divided by Disisterested Persons.—Whenever labor is performed under contract or shares of crop or crops, such crop or crops shall be gathered and divided off before it is removed from the place where it was planted, harvested or gathered, such division to be made by a disinterested party when desired by either party to the contract.

Division.—And such disinterested party shall be chosen by and with the consent of the contracting parties, whenever the parties fail to agree upon any disinterested party, or if complaint is made that the division has been unfairly made, within ten days after such division, it shall be the duty of the Trial Justice residing nearest the place where such crop or crops are planted, harvested or gathered, to cause, under his immediate supervision, such equitable division as may be stipulated in the contract. Such disinterested party or Trial Justice shall receive a reasonable compensation for such service, to be paid by both of the contracting parties, according to their several interests, except in cases of an attempt to wilfully defraud the other by one of the contracting parties, and then such compensation shall be paid by the party so attempting to defraud the other. When such division has been made each party shall be free to dispose of their several portions as to him, her or them may seem fitting: *Provided*, That if either party be in debt to the other for any obligation incurred under contract, the amount of said indebtedness may be then and there settled and paid by such portion of the share or shares of the party so indebted as may be agreed upon by the parties themselves or set apart by the Trial Justice or any party chosen to divide said crop or crops. (*Ib.*, S. 10.)

To have a Lien on Crops for Labor.—Whenever laborers are working on shares of crop or crops or for wages or money, or other valuable consideration, they shall have a prior lien upon said crop or crops, in whomsoever hands it may be. Such portion of the crop or crops to them belonging, or such amount of money or other valuable consideration due shall be recovered by an action in any Court of competent jurisdiction. (*Ibid*, S. 11.)

Violation of Contracts and Fraud.—Whenever any contract or contracts are violated or broken, or whenever fraud is practiced or

attempted to be practiced by either party to such contract or contracts, at any time before the conditions of the same are fulfilled and the parties released therefrom, complaint may be made before a Trial Justice or may be carried before any Court having jurisdiction in such cases where the extent and character of the offense shall be determined.—(*Ibid*, S. 12.)

Penalty when the Offending Party is the Land Owner or Party Chosen to Make the Division.—If the offending party be the land owner or owners, he, her, or their agent or agents, and fraud has been practiced, or attempted to be practiced, either in keeping any account or accounts between him, her, or them, and the other party or parties to such contract or contracts, or in the division of the crop or crops, or the payment of money or other valuable consideration, upon proof to conviction, such offender or offenders shall forfeit and pay a fine, not less than fifty (50) dollars, nor more than five hundred (500) dollars, or if it be a disinterested party chosen to make a division or divisions of crops hereinbefore provided, he, she, or they, shall be liable to prosecution as for a misdemeanor, and shall be tried in any Court of competent jurisdiction, and on proof to conviction be fined as above, or be imprisoned for a period not less than one month nor more than one year, at the discretion of the Court. (*Ibid.*)

When the Offending Party is a Laborer.—If the offending party be a laborer or laborers, and, the offense consists either in failing wilfully and without just cause, to give the labor reasonably required of him, her, or them by the terms of such contract, or in other respects shall refuse to comply with the conditions of such contract or contracts, or shall fraudulently make use of or carry away from the place where the crop or crops, he, she or they may be working, are planted, any portion of said crop or crops, or anything connected therewith or belonging thereto, such person or persons so offending shall be liable to fine or imprisonment, according to the gravity of the offense, upon proof to conviction before a Trial Justice or a Court of competent jurisdiction. (*Ibid*,)

Penalty if Trial Justice Refuse to Perform his Duty Herein.—Any Trial Justice or other officer before whom complaint is made and whose duty it is to try such cases as is hereinbefore provided, who shall offend against the true intent and meaning of this chapter, or shall refuse to hear and determine impartially, all cases that may be brought before him under the foregoing provisions, shall be liable to a charge of malfeasance in office, and upon proof to conviction shall be forthwith removed from office and fined a sum not less than fifty or more than one hundred dollars. (*Ibid*, S. 13.)

Wages of Laborers How paid.—By A. A. 1872, No. 169, it is enacted "that, unless otherwise provided by special contract, it shall be and is hereby required of all persons who employ laborers upon plantations or elsewhere by the day, week, month or year, to pay such laborers or em-

ployees at the time the wages of such laborers or employees are due and payable by agreement, in the United States bank notes or fractional currency." (15 Stat. 216.)

Issuing Checks in lieu of, Unlawful.—Penalty.—Construction of the Word "Checks."—A. A. 1875, No. 722, "if any person or persons after the passage of this Act, shall offer to any laborer or employee (*except as provided for in the paragraph above*) as compensation for labor or services performed, checks or scrip of any description, known as plantation checks, payable at some future time, or on the shops or stores of the employers in lieu of United States bank notes or fractional currency, the said person or persons so offending shall be liable to indictment and punishment by a fine not exceeding two hundred dollars or by imprisonment not exceeding one year, or both, according to the discretion of the Court. *Provided*, the word "checks," in this Act shall not be construed so as to prohibit the giving of checks upon any of the authorized banks of deposit or issue in this State." (15 Stat., 899.)

LABORERS—ENTICING OR PERSUADING TO LEAVE EMPLOYEE OR EMPLOYMENT OF UNDER CONTRACT.

Any person or persons who shall entice or persuade by any means whatsoever, any tenant or tenants, servant or servants, laborer or laborers, under contract with another, duly entered into between the parties in the presence of one or more witnesses, whether such contract be verbal or in writing, to violate such contract or shall employ any laborer or laborers knowing him, her or them to be under contract with another, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in the County Jail not less than ten or more than thirty days. (17 Stat., 423.)

LANDS AND TENEMENTS.

1st. How Persons in Possession as Tenants at Will, Servants, Etc., May be Removed.
2d. Trespassers—How Removed.
3d. Forms.

I. HOW PERSONS IN POSSESSION AS TENANTS AT WILL, SERVANTS, ETC., MAY BE REMOVED,

When any person or persons have gone or shall hereafter go into possession of any lands or tenements of another, either as a tenant at will, or under a contract to serve another, either as a domestic servant or common laborer, or otherwise, and shall refuse or neglect to quit the

premises so occupied when required by the person letting the same, or upon the termination of the contract, either by its own limitation or from any other cause, it shall be lawful for the person letting the premises to apply to any Trial Justice whose duty it shall be to have a notice served upon the person or persons so refusing to quit, to show cause before him, at the expiration of ten days from the personal service of such notice, why he should not be ejected, and if no sufficient cause be then shown it shall be the duty of the Trial Justice forthwith, to issue his warrant, directing the Sheriff or any Constable, requiring him, without delay, to eject such person or persons from the premises so let, and authorizing him to use such force as may be necessary. (Gen. Stat. c. XXV., S. 27, p. 199.)

2ND.—OF TRESPASSERS AND HOW REMOVED.

If any person shall have gone into, or shall hereafter go into possession of any lands or tenements of another, without his consent, or without warrant of law, it shall be lawful for the owner of the land so trespassed upon, to apply to any Trial Justice to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit, it shall then be the duty of such Trial Justice to issue his warrant to any sheriff or constable, requiring him forthwith to eject such trespasser, using such force as may be necessary: *Provided, however,* that if the person in possession shall, before the expiration of the said five days, appear before such Trial Justice, and satisfy him that he has a color of claim to the possession of such premises, and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the Trial Justice, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim, by any of the modes of proceeding provided by law, the said Trial Justice shall not issue his warrant as aforesaid. (*Ibid,* S. 28.)

A color of title, is anything which shews the extent of the occupants' claim, as a plat, a bond, a receipt, or a written or parol contract of purchase defining the boundaries. (Simmons *vs.* Parsons, 2 Hill, 492. Gray *vs.* Bates, 3 Strob., 504.)

3RD.—FORMS.

FORM NO. 146.—NOTICE AND AFFIDAVIT TO QUIT, TO TENANT AT WILL, SERVANTS, &C.

SOUTH CAROLINA,
COUNTY OF ———. } *Notice to show cause.*

To E. F.:

Whereas, C. D., has this —— day of —— A. D. 18——, made oath before me, that having demanded possession of certain premises by you occupied as (*here state whether the defendant entered as a tenant at will, or as*

a domestic servant, laborer, or otherwise,) you have refused and still refuse and neglect to quit the premises so occupied.

You are hereby required to show cause before me at my office at—— on the —— day of —— A. D. 18——, at ——o'clock M, (*date to be ten days from the date of service,*) why you should not be ejected from the said premises.

Witness my hand and seal this —— day of —— A. D. 18——.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA.
COUNTY OF ——

Personally appeared before me A. B., Trial Justice, in and for the said County in the said State, C. D., who being duly sworn, says: That E. F., is in possession of certain lands and tenements of him the said C. D., situate in the said County and State, into which he entered as a (*here state how he entered, whether as tenant at will, domestic servant, common laborer or otherwise,*) and possession of the said premises having been required, the said E. F., refuses and neglects to yield possession of the same.

C. D.

Sworn to before me this —— day of —— A. D. 18——.

A. B.,
Trial Justice.

FORM NO. 147.—NOTICE TO QUIT AND AFFIDAVIT OF LANDLORD TO TRESPASSER.

THE STATE OF SOUTH CAROLINA
COUNTY OF ——. } *Notice to shew cause.*

To E. F.:

Whereas, C. D., has this —— day of —— A. D. 18——, made oath before me that you are in possession of certain lands and tenements of him the said C. D., without warrant or authority of law, and that you refuse to yield possession of the same.

You are hereby required to show cause before me at my office at—— on the —— day of —— A. D. 18——, at —— o'clock, M., (*time to show cause to be five days from date of service,*) why you should not be ejected from the premises aforesaid.

Witness my hand and seal this —— day of —— A. D., 18——.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——

Personally appeared before me, A. B., a Trial Justice of the said County in the said State, C. D., who being duly sworn, says: That E. F., has gone into possession of certain lands and tenements of him, the said C. D., situate in the County and State aforesaid, without his consent and without warrant or authority of law, and refuses to yield possession of the same.

C. D.

Sworn to before me this —— day of —— 18 ——.

A. B.,
Trial Justice.

FORM No. 148.—WARRANT OF EJECTMENT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF——

By A. B., Trial Justice in and for the said County in the said State.

To any Lawful Constable:

Whereas, complaint having been made unto me by C. D., a notice to shew cause why he should not be ejected from certain premises unlawfully occupied by him, was duly served upon E. F., on the —— day of —— A. D. 18——. And whereas the said E. F., having appeared and made answer to the said notice, (or not having appeared and answered as the case may be,) ten (or five days if he entered as a trespasser.) days thereafter, to wit, on the —— day of —— A. D 18——, and no sufficient cause having been shown by the defendant aforesaid

These are therefore to authorize and require you forthwith to eject the said E. F., and all and every person whatsoever, in possession of the said premises, by or through the said E. F., and to deliver to the said C. D., his heirs and assigns, full possession of the same.

Herein fail not under pain of the penalties that will fall thereon.

Witness my hand and seal this —— day of —— A. D. 18——.

A. B., [L. S.]
Trial Justice.

FORM No. 149.—CONSTABLE'S RETURN.

Pursuant to the command of the within warrant, I have this day put the landlord into the full possession of the premises therein mentioned

Dated this —— day of —— 18 ——.

M. N.,
Constable.

LANDLORD AND TENANT.

(See Distress and Lands and Tenants.)

1st.—Of the Tenancy.
2nd.—Of the Rent.
3rd.—Of the Repairs.
4th.—Of the Determination of the Tenancy, and Getting Possession by the Landlord.
5th.—Right of Tenant to Remove Fixtures.
6th.—Forms of Procedure.

1st.—OF THE TENANCY.

Leases for more than one year, to be recorded in three months.—All leases or contracts in writing, hereafter to be made between landlord and tenant, for a longer term than twelve months, shall not be valid in law, against the rights and claims of third persons, unless the same shall have been recorded in the office of the Register of Mesne Conveyance, at least within three months from the time of the execution thereof; nor shall any payment made in anticipation of rent, for a longer period than twelve months, be considered a valid discount against the claims and rights of third persons. (Gen. Stat., C. LXXXIV, S. 1.)

How and when to terminate.—Every lease or written agreement hereafter to be entered into, for the renting and leasing of lands and tenements, shall absolutely and unequivocally end and determine at the period therein stated without it being obligatory on the tenant or the landlord to give the notice required by law. (*Ibd.*, Sec. 2.)

No parol lease valid for more than one year.—No parol lease shall give the tenant a right of possession for a longer term than twelve months from the time of entering on the premises; and all such leases shall be understood to be for one year, unless it be stipulated to be a shorter term. (*Ibd.*, S. 3.)

Neither the plea of *nil habuit tenementis, nil demisit*, nor *rien passa*, can be pleaded to covenant for rent on an indenture, for it operates as an estoppel. But the estoppel only exists during the continuance of the occupation of the tenant; and if he be ousted by a paramount title, he may plead it. (Maverick vs. Lewis, and Gibbs, 3d McC. 211.)

An outstanding title, alone, will not discharge a lessee by indenture. He must be evicted, or prevented from entering or from enjoying the thing demised, by virtue of such title; and he must set out the title in plea, and show particularly how it arises. (*Ibd.*)

Where a person is in possession by an outstanding lease, and refused to give possession to the new lessee, it is tantamount to an eviction (*Ibd.*)

No particular words are necessary to constitute a lease, but there must be an interest in the freehold conveyed; and an agreement to take charge of a farm and to work on shares is not such an outstanding lease as will amount to an eviction, where the person in possession under such agreement, refused to deliver possession to the lessee. (*Ibd.*)

Rent is not essential to the existence of a tenancy. (Floyd vs. Floyd, 4 Rich., 28.)

Where the lease is for a term of years, with an annual rent, if the tenant holds over the term, without anything being said as to a new contract, the law presumes that he holds, subject to the same annual rent as stipulated in the contract, and if interest is recoverable on the annual arrears of the written lease, it will also be recoverable on the subsequent annual arrears. (Dorill vs. Stephens, 4th McC. 59.)

A person who enters and holds land under a contract to purchase, is to be regarded, at law, as, at least, a tenant at will. (Jones vs. Jones, 2 Rich., 542.)

The general rule that a tenant cannot show that his lessor, has no title, is the protection of the lessee, and may be waived by him (Wood vs. Chambers, 3 Rich., 151.)

The title which the landlord claims is that which the tenant acknowleges, whether that claim be well or ill founded. (Syme vs. Sanders, 4, Strob., 201.)

If the tenant convey the land in fee simple, it is a disclaimer of the tenancy, and the landlord may sue for the land without giving notice to quit, and before the termination of the lease. (Trustees of Wadworthville School vs Meetze, 4 Rich., 52).

A tenant cannot dispute the title of the landlord under whom he entered, but where one, already in possession, acknowledges himself to be the tenant of another, he may destroy the effect of such acknowledgement, by showing that it was procured by fraud, or procured from a clear mistake as to title. Owens vs. Mullinax, 4 Rich., 592.)

One entering as a sub-tenant, afterwards acquiring a perfect title, and then holding over, is estopped from disputing the landlord's title; he must surrender the possession. (Millhouse vs. Patrick, 6 Rich., 352.)

2D.—OF THE RENT.

How Rent Recovered if Tenant for Life die Before it is Payable.—Where any tenant for life shall happen to die before, or on the day on which any rent was reserved or made payable upon any devise or lease of any lands, tenements or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may recover of and from such under-tenant or undertenants of such lands, tenements or hereditaments, the rent thereof, as follows:

Proportion to be Paid.—If such tenant for life die on the day on which the rent was made payable, the whole, or if before such day, then

a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time on which the said rent was growing due, as aforesaid, making all just allowances, or a proportionable part thereof, respectively. (Gen. Stat., C. LXXXIV, Sec 4 and 5.)

Under-Tenant to have Possession until Crop Secured.—If any person shall rent or hire lands of a tenant for life, and such tenant for life dies, the person hiring such land shall not be dispossessed until the crop of that year is finished, he or she securing the payment of the rent when due (*Ibid*, Sec 6.)

Rent, how Recovered, when the Demises are not by Deed.—It shall and may be lawful to and for any landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments held or occupied by a tenant or tenants, in an action for the use and occupation of what was so held or enjoyed; and if, in evidence on the trial of such action, any parol, demise, or any agreement (*not being by deed*) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefor be non-suited, but may make use thereof as an evidence of the amount of the damages to be recovered. (*Ibid*, Sec. 7.)

Penalty for Tenants Continuing in Possession Three Months After Demand of Possession.—All tenants, whether for life or years, by sufferance or at will, or persons coming in under or by collusion with them, who shall hold over after the legal determination of their estates, after demand made in writing for delivering possession thereof by the person having the reversion or remainder therein, or his agent, such tenant or other person holding over for the space of three months after such demand, shall forfeit double the value of the use of the premises, recoverable by action (*Ibid*, Sec. 11.)

Penalty for not Delivering Possession in Accordance with Notice of Intention to Quit.—In case any tenant shall give notice, in writing, of his intention to quit the premises rented by him, and shall not accordingly deliver up the possession at the time in such notice contained, the said tenant, his executors or administrators, shall pay to the landlord double the rent which he would otherwise have been liable to pay: *Provided, nevertheless*, That nothing herein contained shall be construed to give to such tenant a right to discontinue or determine his tenancy by such notice, in any other manner than according to the laws of force at the time of giving the same. (*Ibid*, Sec. 13.)

Where a tenant is dispossessed by an enemy, he ought to pay rent only for the term he peaceably enjoyed, and not for the time he was prevented by the casualties of war. (Bayly *vs.* Lawrence, 1st Bay., 499.)

Under a plea of no rent in arrear the defendant may show that his house was rendered untenable by a storm, the rent ought to be apportioned according to the time it was occupied. (Ripley *vs.* Wightman, 4 McC., 447.)

cities and towns, but they are astonishingly few.

Nevertheless, it is obvious that thousands of birds must die each month. Where do they die? That is a question that even the naturalist cannot answer satisfactorily.

Of course, many birds are killed off by animals. Cats kill many birds, and birds kill each other, as witness the fact that an ailing blackbird is killed off by his fellows, and other birds adopt a similar method. It is quite possible that those killed off birds are the ones seen dead in woods and fields, but there yet remain thousands of bird deaths that cannot easily be accounted for.

The most likely explanation is that a sick bird crawls away to cover of some sort and there dies. Without doubt hundreds of birds so perish each month. And sometimes a bird gets into a corner from which he cannot escape, then he dies there.

Small animals as well as birds crawl off to some isolated spot and die unseen, and where they die there do their bodies wither to decay. A sick dog gets out of sight if he possibly can, and an ailing cat does the same thing. They seek to hide, and it would almost seem that the bird and animal kingdoms do not want the eye of man to rest on their members when the time of death comes.

In holes in walls, in holes in trunks of trees, in odd corners all over the country do birds die, and small animals as well. Rarely do they die out in the open, and therefore it is not so very singular, after all, that you do not come across the dead body of a bird or other animal very often.

The Verb: "To Blease."

(New York Evening Post.)

One feels that a new verb should be added to English, "to blease." Then only will it be possible to keep pace with the daily activities of the governor of South Carolina and at the same time effect enormous economies in time, in printer's ink and in temper. "To blease" would mean doing a great many obnoxious things at the same time or in quick succession, as, for instance, invoking the sacred name of the law and the starry flag in one breath and inciting to murder in the next; exalting the chivalry of southern manhood as exerted in the defense of woman's honor, and sending women shame-faced out of the room by the foulness of one's language; uttering loud cries in defense of the misunderstood, mistreated southland, and making other southern governors writhe in their seats with disgust. "To blease" is a veritable treasure house of onomatopoeia. It immediately suggests a host of other expressive verbs—to blow, to bleat, to scream, to wheeze, to blab. It is eminently adapted to describe the act of raising clouds of dust, getting red in the face, threatening to have a man's life, defying heaven, the lightning and the dispensary laws of one's state. To the press associations the new verb would bring untold savings. Instead of sending out column dispatches, a newspaper correspondent would merely have to wire: "He bleases again."

Train Flirtations.

(New York Evening World.)

"Fifteen years on the road and not a flirtation yet, is my record," said the needle and thread drummer. "The only time a beauty ever spoke to me on the train was down in West Virginia on the way to Wheeling.

"'Do you know what time we get there?" she inquired.

"'Six-thirty,' I told her.

"'You know,' she continued, 'I was never on a train before. It seems so strange to me!'

"To make a long story short, she was the kind you read about in books, but seldom meet in real life—the real innocent flower. When we got to Wheeling I put her on the car for Pittsburgh, her destination, and gave her some fatherly advice about speaking to strangers.

"About three months later I was unpacking the sample trunk after the long trip, when the stock boy said there was someone downstairs to see me. There stood the girl and her father, who was a judge down in his own state.

"'I wish to thank you, sir, for your kindness to my daughter while traveling,' he said warmly.

"I assured him it was nothing unusual, but he thought otherwise and insisted on my taking dinner with him that evening."

"And since then you have wondered who she was?" put in the button man.

"No," said the needle and thread drummer. "She's my wife now."

[illegible] Rap. Tran.	7,000	93	92¼	92½
Canadian Pacific	900	260	259⅛	259½
Central Leather	200	29	29⅛	28¾
Chesapeake & Ohio	300	78¾	78¾	79
Chi. Grt. Western	......	.....	.....	16
Chi. Mil. & St. P	100	112½	112½	111⅞
Chi. & Northwest.	......	.....	.....	135½
Colorado F. & I.	......	.....	.....	33¼
Consolidated Gas	100	141	141	141
Corn Products	100	14½	14½	14
Delaware & Hudson	......	.....	.....	163
Denver & R. Grande	......	.....	.....	19⅞
do pfd.	......	.....	.....	38½
Distillers' Secur.	400	21½	21¼	21
Erie	100	31¾	31¾	31¾
do 1st pfd.	......	.....	.....	49
do 2d pfd.	......	.....	.....	38⅞
General Electric	100	184	184	183
Great North. pfd.	1,600	130⅞	130½	130⅝
Grt. North. Ore Ctfs.	......	.....	.....	40½
Illinois Central	100	126½	126½	127
Interborough-Met.	7,400	19½	19	19⅛
do pfd.	8,600	65	63¾	63⅜
Inter-Harvester	......	.....	.....	110½
Inter-Marine pfd.	......	.....	.....	18
International Paper	900	12⅞	112½	12⅞
International Pump	......	.....	.....	19
Kansas City Southern	......	.....	.....	27
Laclede Gas	......	.....	.....	102½
Lehigh Valley	4,800	171⅞	171	171½
Louisville & Nash.	200	141	141	140½
M., S. P. & S. St. M.	100	140	140	139
Mo., Kan. & Texas	......	.....	.....	26
Missouri Pacific	700	41⅛	40⅞	40⅞
National Biscuit	......	.....	.....	124
National Lead	......	.....	.....	55
N. Rys. Mex. 2d pfd.	......	.....	.....	27½
New York Central	300	108¼	108¼	108¼
N. Y., Ont. & West.	......	.....	.....	31
Norfolk & Western	......	.....	.....	112
North American	......	.....	.....	79
Northern Pacific	......	.....	.....	120
Pacific Mail	100	31	31	30¾
Pennsylvania	400	122	121⅝	121½
People's Gas	300	114½	114½	114
P., C., C. & St. L.	200	103½	103½	102
Pittsburgh Coal	300	24¼	24¼	24⅛
Pressed Steel Car	......	.....	.....	35
Pullman Palace Car	300	165	164½	163
Reading	8,000	167½	166¾	167
Republic Iron & Steel	100	26	26	26
do pfd.	......	.....	.....	84¾
Rock Island Co.	300	23⅝	23½	23¾
do pfd.	......	.....	.....	43½
S. L. & S. F. 2d pfd.	200	30	29¼	29
Seaboard Air Line	......	.....	.....	18¼
do pfd.	......	.....	.....	45½
Sloss-Sheffield S. & I.	......	.....	.....	42
Southern Pacific	2,900	105¼	104⅝	105
Southern Railway	200	28	27⅞	27⅞
do pfd.	200	80	80	80
Tennessee Copper	......	.....	.....	38
Texas & Pacific	......	.....	.....	22½
Union Pacific	5,900	160	159	160
do pfd.	......	.....	.....	91½
United States Realty	......	.....	.....	73½
United States Rubber	3,000	64⅞	61⅝	63
United States Steel	10,700	68⅛	67½	67⅞
do pfd.	400	109½	109	109¼
Utah Copper	200	58⅜	58¼	58
Va.-Caro. Chemical	100	43	43	42¾
Wabash	......	.....	.....	4
do pfd.	......	.....	.....	13
Western Maryland	......	.....	.....	47½
Western Union	200	75	75	74½
Westinghouse Electric	......	.....	.....	79
Wheeling & L. Erie	......	.....	.....	8

Total sales for the day, 101,000 shares.

Condition of Treasury.

WASHINGTON Dec. 26.—The condition of the United States treasury at the beginning of business today was: Working balance, $90,487,280; in banks and Philippine treasury, $31,952,588. Total of general fund,

(Buying Prices.)

Sugar, best granulated, per 100 lb.	$5.15
Cheese, New York cream, per lb.	.19
Butter, best creamery, per lb.	.38
Eggs, fresh, per doz.	.35
Eggs, storage	.23
Potatoes—Irish, per bu.	.85
Beans, Navy, per lb.	.05½
Beans, red kidney per lb.	.06½
Beans, pink, per lb.	.06
Rice, best head	.06
Grits, pearl, per sack	1.80
Meat—Dry salt, per lb.	.13
Lard, pure	.12
Lard compound	.08⅓
Coffee, Rio, No. 7	.23
Soap, 100 bars to box	3.90
Hams, per lb	.18
Peas, bushel	2.75
Peaches, evaporated	.08
Apples, evaporated	.10½
Prunes, 6½c to	.14
Apricots	.12
Oranges, per box	$2.25@2.35
Apples, eating, barrel	$4.50@5.00
Apples, cooking, barrel	3.50

Hides, Wool, Leather, Etc.

(Prices paid by Goodman Hide and Leather Company.)

HIDES—Green, salted hides. 11@11½c; fresh green hides, 8@9c; dry flint hides, 20@21c; dry salted hides, 18@19c; damaged hides half price.

WOOL—Spring, tub-washed, clear of burs, 30@32c; unwashed, clear of burs, 20@22c; fall wool, 27@29c.

GINSENG—Per lb., $5@5.50; clear of tops, Golden Seal, $2.50@3.00 per lb.

TALLOW—Cake, 5@5½c.

SHEEPSKINS—Per piece, 10@40c; goatskins, per piece, 10@25c.

BEESWAX—25c.

FEATHERS—Prime, new, 40c; (buying price.)

STAR ROOT—15c.

PINK ROOT—15c.

LADY SLIPPER—10c.

MAYAPPLE ROOT—3c.

Packing House Products.

(J. H. Allison & Co.)

D. S. EXTRAS—12c; D. S. fat backs, 11c; D. S. butts, 10c; D. S. C. bellies, 18@20, 12c; 20@25, 12c; 25@30 12⅜c; 30@35, 17c; 30@35, 13c.

BACON—C. Bellies, 18@20, 14½c; Oxford B. bellies, 12@14, 15½c.

LARD—Premium, 13c; Silver Leaf, 12c; Jewel compound, 9½c.

Grain and Feedstuffs.

(D. C. Wheeler & Co.)

White corn, at store	$ .70
Mixed corn	.70
White corn, on wharf	.63
Choime timothy hay	1.20
White Oats	.50
Mixed oats	.49
No. 1, timothy hay	1.20
No. 2 timothy hay	1.10
Clover and timothy hay	1.15
Corn hearts	1.50
Cottonseed hulls	.65
Cottonseed meal	1.50

(Stagmaier & Co.)

White beans (per bushel)	$2.00

Flour, Meal and Bran.

(Shelton Mills.)

"Shelton's Best"	$6.50
Self-rising	6.30
Hungarian Purity	5.80
Half Patent	5.30
Pearl meal in 48-lb. sacks	.69
Bran, in uniform 75 lb. sacks	[illegible]

If a rent certain be reserved, subject to a condition to be performed by the tenant, the landlord may distrain, notwithstanding the condition, unless the tenant show a performance. (Reeves *vs.* McKenzie, 1 Bailey, 497.)

Although the English rule, that stray cattle are destrainable for rent, where they have been *levant et couchant* upon the land, may not be applicable to the agricultural usages of this country; yet, when the cattle, etc., of third persons have been put upon the premises, with the consent of the owners, they are liable to distress; nor will it make any difference that the landlord was informed that they did not belong to the tenant Goods left in appropriate public places of deposit, constitute an exception to the general rule. (*Ibid.*)

The tenant of a landlord, whose interest has been sold by the Sheriff (or Coroner) is not bound to pay rent accruing, after the sale, to his lessor. (Moore *vs.* Turpin & Powers, 1 Speer, 32.)

When the tenant of a landlord whose interest has been sold by the Sheriff, after notice of that fact, paid the whole year's rent to the landlord: Held, that the purchaser was entitled to recover from the tenant that portion of the rent that accrued after the sale. (Snyder *vs.* Riley, 1 Speer, 273.)

3d.—OF THE REPAIRS.

Tenants, unless by express contract, have no right to charge their landlords for repairs; and this rule, *a fortiori*, applies, where the tenant knew that the premises were out of repair, and covenanted to return them in the order in which they were received. (City Council *vs.* Moorhead, 2 Rich., 430.)

A general covenant to repair is satisfied by the lessee keeping the premises in substantial repair; a literal performance of the contract is not to be required. (2d Harrison, 1424.)

Under a covenant that the tenant "should and would substantially repair, uphold, and maintain" a house, he is bound to keep up the inside painting. (*Ibid.*)

An agreement to leave a farm as he found it, is an agreement to leave it in a tenantable repair, if he found it so; and will maintain a declaration so said. (*Ibid.*)

A tenant from year to year is only bound to fair and tenantable repairs, so far as to prevent waste or decay of the premises, and not to substantial and lasting repairs, such as new roofing, etc. (*Ibid*, 1425.)

And not being liable to general repairs, he is only bound to use the premises in a husband-like manner, but no further. (*Ibid*)

A tenant, from year to year, of a house, is only bound to keep it wind and water-tight. A tenant who covenants to repair, is to sustain and uphold the premises; but that is not so with a tenant from year to year. (*Ibid.*)

A tenant of a house from year to year, not under any agreement to repair, may quit, without previous notice to his landlord, on the premises becoming unsafe and useless from want of repairs; and such tenant is not liable, in an action for use and occupation, for any rent after the occupation has ceased to be beneficial. (*Ibid.*)

A tenant of a house, who is bound by agreement to keep it in tenantable repair, may quit without notice in the course of his term, if the premises become unwholesome for want of sufficient drainage, and they cannot be kept dry without extravagant and unreasonable labor and expense on his part. (*Ibid.*)

A landlord has no right to enter his tenant's premises to repair them without there was some stipulation at the time of letting to that effect. (*Ibid*, 1426).

4TH.—OF THE DETERMINATION OF THE TENANCY, AND GETTING POSSESSION BY THE LANDLORD.

(1.) Of tenant holding over landlord and non-payment of rent.
(2.) Making alterations of the premises.
(3.) Non-performance of covenants.

(1.) OF TENANT HOLDING OVER AND NON-PAYMENT OF RENT.

In all cases where tenants hold over after the expiration of their leases or contracts for rent, whether the same be in writing or by parol, or shall fail to pay the rent when it shall become due, the landlord is hereby authorized and empowered, either in person or by agent, to enter upon the premises and claim possession; and in case of refusal or resistance, it shall be lawful for the person so letting said premises, houses or tenements, his agent or attorney, to apply to a Trial Justice, whose duty it shall be to have a notice served upon the person or persons so refusing to be dispossessed to show cause before him, if any he can, within three days from the date of said personal service of such notice, why he should not be dispossessed; and if he fails to show sufficient cause, it shall be the duty of the Trial Justice forthwith to issue his warrant, directed to the Sheriff of the County, or any Constable thereof, requiring him, without delay, to dispossess said person or persons from the premises so let, and authorizing him to use such force as may be necessary: *Provided*, That in case any tenant is wrongfully dispossessed, he, she or they may have an action for damage against such landlord. (16 Stat., 635.)

NOTE.—The above Statute (in relation to tenants holding over) appears to have the effect of repealing Section 25 of Chapter XXV of the General Statutes, and also of Sections 8, 9 and 10 of Chapter LXXXIV of the General Statutes.

(2.) Making Alterations of the Premises.

It shall not be lawful for any tenant to make alterations or remove buildings erected upon the leased premises, without permission first had in writing, under pain of forfeiting the residue of the unexpired term of said lease or agreement, parol or written; which said forfeiture shall be ascertained by a Trial Justice, with jurors to be drawn in the same manner as prescribed in cases of forcible entry and detainer. (*See Forcible Entry and Detainer, Subd.* 5, *Proceedings for Restitution.*)

(3.) Non-performance of Covenants.

To support an ejectment on a forfeiture of a lease by non-performance of a covenant, if the covenant be to do an act, the lessor of the plaintiff must give some evidence of the omission of the act; and, if the covenant be for payment of rent, the lessor of the plaintiff must prove a demand of such rent. (2nd Harrison, 1402.)

A lease contained a clause of re-entry in case the term of years thereby granted should be extended or taken in execution; and before the end of the term the Sheriff entered the premises under a writ of extent against the lessee at the suit of the Crown, held an inquisition and seized the lessee's interest into the King's hands; held, that this proceeding was a taking in execution within the latter clause of the condition, and that the term was determined and forfeited to the lessor. (*Ibid.*)

Where in a lease a power of re-entry for a breach of covenant is reserved to the lessor, a forfeiture may be waived, as the lease is thereby rendered voidable only. (*Ibid*, 1403.)

Acceptance of rent after a forfeiture is a waiver of the forfeiture, if the fact of forfeiture was known to the lessor at the time. (*Ibid.*)

If ejectment is brought on a forfeiture of a lease, and after the bringing of such ejectment the landlord accept rent, it is no waiver of the forfeiture. (*Ibid.*)

A distress and continuance in possession might be a waiver of an existing forfeiture, but not so as to any right which accrued subsequently. (*Ibid.*)

Taking an insufficient distress after the forfeiture, for rent accruing before, is not a waiver of the right to re-enter. (*Ibid.*)

5th.—RIGHT OF TENANT TO REMOVE FIXTURES.

With regard to a tenant for years, it is fully established he may take down useful and necessary erections for the benefit of his trade or manufacture, and which enable him to carry it on with more advantage. It has been so held in the case of cider mills. A tenant for years may also carry away ornamental marble chimney-pieces, wainscot fixed only by screws, and such like. But erections for the purposes of farming and agriculture do not come under the exception with respect to trade, and cannot be taken down again. And where the tenant has cove-

nanted to leave all buildings, &c., he cannot remove erections for trade. Where a tenant for years has a right to remove erections and fixtures during his lease, and omits doing it, he is a trespasser afterwards for going upon the land, but not a trespasser *de bonis asportatis*. A farmer who raises young fruit trees on the demised land for filling up his lessor's orchards, is not entitled to sell them, unless he is a nurseryman by trade. (12 Bl. Com., 282—*Note.*)

Though a building may be raised on a brick foundation, and have a brick chimney, if the erection of such foundation is of wood, and the building be used for the purpose of trade or manufacture, the tenant may remove it at the end of his term. (2d Harrison, 1179.)

The machinery of a mill is a part of the freehold, and cannot be legally removed by the tenant. (*Ibid.*)

Window sashes, which are neither hung nor beaded into the frames, but merely fastened by laths nailed across the frames to prevent their falling out, are not fixed to the freehold. (*Ibid*, 1180.)

A pump, erected by a tenant, and so fixed as to be removable without injury to the freehold, may be taken away by him at the expiration of his term, as being an article of domestic use or convenience. (*Ibid.*)

A tenant, (*not a gardener by trade,*) cannot remove a border of box planted by himself on the premises demised, unless by special agreement with the landlord. (*Ibid.*)

6TH.—FORMS.

FORM NO. 150.—NOTICE TO TENANT HOLDING OVER LANDLORD.

THE STATE OF SOUTH CAROLINA, } *Court of Trial Justice.*
COUNTY OF ———. }

C. D. } *Tenant Holding over Landlord.*
vs. }
E. F. }

To E. F.:

You are hereby required to appear before me at my office, at ———, in the said County and State, (*three days from the date of service,*) next, the —— day of ———, 18—, at — o'clock — M, to show cause, if any you have, why possession of the premises at ———, in the County and State aforesaid, now unlawfully held by you, over and against C. D., your landlord, (*as it is said,*) should not be forthwith restored to the said lesser, his heirs or assigns.

Herein fail not.

Given under my hand and seal, this —— day of ———, A. D. 18—.

A. B., [L. S.]
Trial Justice.

FORM NO. 151.—WARRANT OF EJECTMENT.

(*See Warrant of Ejectment in Lands and Tenements.*)

(Same Form.)

LARCENY.

I.—Simple Larceny Unaccompanied by any other Atrocious Circumstances, and

II.—Mixed or Compound Larceny, in which there is the Additional Aggravation of Taking from the House or Person.

I.—OF SIMPLE LARCENY.

Simple larceny is the felonious taking and carrying away of the personal goods of another. It may be either grand or petit larceny; grand larceny, when the value of the goods stolen exceeds twenty dollars in value, and petit larceny, when the value does not exceed that amount.

(1st.) Of the Taking.
(2d.) Of the Carrying Away.
(3d.) Of the Intent.
(4th.) As to the Goods of which Larceny may be Committed.
(5th.) Of the Ownership.

(1st.)—Of the Taking.

It must be a taking. This implies the consent of the owner to be wanting. Therefore, no delivery of the goods from the owner to the offender, upon trust, can ground a larceny. As if A lends B a horse, and he rides away with him; or, if I send goods by a carrier, and he carries them away; these are no larcenies. But if the carrier opens a bale or pack of goods, or pierces a vessel of wine, and takes away part thereof, or if he carries it to the place appointed, and afterwards takes away the whole, these are larcenies; for here the intent to steal is manifest; since, in the first case, he had otherwise no inducement to open the goods, and, in the second, the trust was determined, the delivery having taken its effect. But mere non-delivery shall not, of course, be intended to arise from a felonious design, since that may happen from a variety of other incidents. Neither by the common law was it larceny in any servant to run away with the goods committed to him to keep, but only a breach of civil trust. But if he had not the possession, but only the care and oversight of the goods, as the butler of the plate, the shepherd of sheep, and the like, the embezzlement of them is felony at common law. So if a guest robs his inn or tavern of a piece of plate, it is larceny; for he hath not the possession delivered to him, but merely the use, and so it is declared to be by Statute 3 and 4, W. M., c. 9, if a lodger runs away with goods from his ready furnished lodgings. (4th Bl. Com., 230.)

Breach of Trust.—The above has been modified by Statute. Now, any person committing a breach of trust with a fraudulent intention,

shall be held guilty of larceny; and so shall any person who shall hire or counsel any other person to commit a breach of trust with a fraudulent intention. (Gen. Stat., C. CXXVIII, S. 11, p. 716.)

There is one case in which it has been holden, that the taking will not amount to a larceny, though it be accompanied with the intent to steal; namely, where the taking is by a finding of the property. Thus, it is laid down in the books, that if one lose his goods and another find them, though he convert them, with an intent to steal, to his own use, yet it is no larceny, for the first taking was lawful. And again, if A find the purse of B in the highway, and take it and carry it away, with all the circumstances that usually prove the intent to steal, as denying it, or secreting it, yet it is not felony. But though, when the particular circumstances of any case furnish a presumption of an intended dereliction of treasure trove, or waif, or stray on the part of the owner, no larceny can be committed by taking them before seizure by the lord; yet, in other cases, the doctrine of a taking, by finding, must be admitted with great limitation, and must be understood to apply only where the finder really believes the goods to have been lost by the owners, and does not color a felonious taking under such a pretence. (2 Russell, 101.)

Thus, where the prisoner found a sum of money on the highway, which he soon after converted to his own use, with various circumstances of fraud and concealment, —it was held, "that if the prisoner at the time of finding the pocket-book, and before he removed the money, knew it to be the property of the prosecutor," the conversion under the circumstances would be larceny. (State vs. Ferguson, 2 McMullan, 502.)

The following cases also show that the taking *animo furandi* of goods which have been found by the party, may amount to larceny.

A gentleman left a trunk in a hackney coach, and the coachman took and converted it to his own use. This was holden to be felony, on the ground that the coachman must have known where he took up the gentleman and his trunk, and where he set him down; and that he ought therefore, to have restored it to him.

In a late case where the prisoner was indicted for stealing a box, containing a quantity of wearing apparel, and two bonds, it appeared that he was a hackney coachman, and that he took up the prosecutor with several trunks and packages, amongst which was the box in question, at an hotel in the Adelphi, and set him down in Orchard Street, Portman Square, where all the articles were taken out of the coach by the prisoner and the prosecutor's servant, except this box, which was corded, and had been deposited under the seat of the coach. The prisoner received his fare and drove away after which, in a few minutes, the box was missed, but the prisoner and the coach were quite gone; and it was not till several days had elapsed, and after hand-bills had been dispersed and advertisements inserted in the public prints, offering a reward to any person who should bring home the box, that the prisoner was apprehended. The box was then found at the house of a Jew

to which the prisoner said he had taken it, but it was uncorded, the hasps of it were forced off, and it contained only a part of the property which was in it when it was lost, the two bonds and several of the articles mentioned in the indictment having been taken away. The case was left to the jury, to consider whether they were satisfied that the prisoner had uncorded the box, not merely from a natural, though idle curiosity, but with an intention to embezzle some part of its contents; and they were of opinion, that he uncorded the box and destroyed the papers with an intent to embezzle the goods found in the box. They accordingly found him guilty; and the case being reserved for the consideration of the twelve judges, a majority of them were of opinion that the conviction was proper. (2 Russell, 101.)

The doctrine as to a felonious taking of goods, which have been found by the party, was further confirmed in two more recent cases. In the first of these cases it appeared that a pocket-book, containing bank notes, had been found by the prisoner in the highway, and afterwards converted by him to his own use. Upon which, Lawrence, J., observed, that if the party finding property in such manner, knows the owner of it, or if there be any mark upon it by which the owner can be ascertained, and the party, instead of restoring the property, converts it to his own use, such conversion will constitute a felonious taking. And in the subsequent case, the two prisoners (father and son) were convicted of stealing a bill of exchange, upon evidence of their having found and converted it to their own use, by endeavoring to negotiate it. Gibbs, J., stated to the jury, that it was the duty of every man who found the property of another, to use all diligence to find the owner, and not to conceal the property, (which was actually stealing it,) and appropriate it to his own use. (2 Russell, 102.)

The prosecutor having been inveigled by sharpers to act with them, and suffered by them to win in the first instance, was afterwards stripped of a large sum, by losing a bet; and the whole transaction was found by the jury to have been a preconcerted scheme to get the prosecutor's money; but it was holden not to be a felonious taking, as the prosecutor parted with the property in his money under an idea that it had been won fairly. (Nicholson's case, 2 Russell, 111.)

The prisoner, with some accomplices, being in company with the prosecutor, pretended to find a valuable ring. The prosecutor was to have a share of the pretended value of it, and was prevailed upon to deposit his watch, etc., and to take the ring until his share of the value should be paid. The accomplices of the prisoner made off with the watch, etc., and the ring proved to be of the value only of ten shillings. It was left to the jury to say whether this was done with a preconcerted plan to obtain the watch, etc., and the prisoner was found guilty. (Patch's case, *Ibid*, 124.)

Where the prisoner induced the prosecutor to deliver twenty guineas and four doubloons, by way of pledge for a counterfeit jewel, pretended

to be found, with intent to steal the money, it was holden to be larceny. (Moore's case, *Ibid*, 125.)

If several act in concert to steal a man's goods, and he is induced by fraud to trust one of them in the presence of the others, with the possession of the goods, and then another of the party enticed the owner away, in order that the party who has obtained such possession may carry the goods away, all will be guilty of felony, the receipt by one under such circumstances being a felonious taking by all. (*Ibid*, 127.)

2d.—OF THE CARRYING AWAY.

There must not only be a taking, but a carrying away; *Cepit et Asportavit*, was the old law latin. A bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation or carrying away. As if a man be leading another's horse out of a close, and be apprehended in the fact; or if a guest, stealing goods out of an inn, has removed them from his chamber down stairs; these have been adjudged sufficient carryings away to constitute a larceny. For, if a thief intending to steal plate, take it out of a chest where it was and lays it down upon the floor, but is surprised before he can make his escape with it, this is larceny. (4th Bl. Com., 231.)

But a very slight asportation will suffice. Thus, to snatch a diamond from a lady's ear which is instantly dropped among the curls of her hair, to remove sheets from a bed, and carry them into an adjoining room, to take plate from a trunk and lay it on the floor with intent to carry it away, and to remove a package from one part of a wagon to another with a view to steal it, have respectively been holden to be felonies; and where a prisoner had lifted up a bag from the bottom of a boot of a coach, but was detected before he had got it out, it did not appear that it was entirely removed from the space it at first occupied in the boot, but the raising it from the bottom had completely removed each part of it from the space that specific part occupied; this was held a complete asportation. (4 Bl. Com., 232—Note.)

3d—OF THE INTENT.

One of the most material considerations respecting the taking and carrying away of goods necessary to constitute larceny is whether the fact were done *animo furandi*—"*cum animo dico, quia sine animo furandi non committitur.*" The ordinary discovery of such felonious intent is where the party commits the fact clandestinely, or upon its being laid to his charge, denies it; but this is by no means the only criterion of criminality, for in cases that may amount to larceny, the variety of circumstances is so great and the complication thereof so mingled that it is impossible to recount all those which may evince a felonious intent or *animmuim furandi*. It is useful to refer to those points which

have already come under consideration, but new cases will continually occur in which the felonious intent must be left upon the particular circumstances to the due and attentive consideration of the Court and Jury, who will not forget the excellent rule that in doubtful cases it is proper rather to incline to acquittal than conviction. (2 Russell, 97.)

It is clear that the taking, though wrongful, may only amount to a trespass. Thus, if a man takes away the goods of another, openly before him or other persons, otherwise than by apparent robbery, this carries with it an evidence only of a trespass, because done only in the presence of the owner or of other persons who are known to the owner. And the evidence of its being only a trespass will be strong when a person having possessed himself of the goods of another avows the fact before he is questioned. Again, if a man leaves a harrow or plow in a field, and another person who has land in the same field uses those instruments, and having done with them, either returns them to the place where they were or acquaints the owner with his having taken them, this is no felony, but at most a trespass. And the same conclusion must be drawn where a man having cattle upon a common which he cannot readily find, takes his neighbors horse which is depasturing on the common, rides about upon it to find his cattle, and when he has done with it turns it again upon the common. But the case will not be so clear where his property is taken without the privity or leave of the owner, and no intention to return it is manifested by the party by whom it is taken. (*Ib.*)

The prisoners took two horses from a stable, rode them to a place at a considerable distance and there left them, proceeding on their journey on foot, and the Jury having found that the horses were taken by the prisoners only in order to ride them and afterwards leave them, it was holden to be trespass and not larceny. (*Ibid—Phillips & Strong's Case.*)

Clandestinely taking away articles in order to induce the owner, a girl, to fetch them, and thereby to give the party an opportunity to solicit her to commit fornication with him, is not a felonious taking. The prisoner took from a house in the night a young girl's bonnet and some other articles of her dress and carried them to a hay mow, where he had twice had connexion with her, and the Jury thought that he only took them in order that she might again go to the mow, and that he might have another opportunity of soliciting her to repeat the connexion. Upon a case reserved, the Judges thought the taking with such an intent was not felonious and the prisoner was pardoned.—(*Ibid*, 28.)

A taking of another's property may also be by mistake, arising from heedlessness or accident, in which the *animus furandi* has no part. Thus, if the sheep of A stray from his flock to the flock of B, and B drove them along with his *own* flock, and, by mistake, without knowing or taking heed of the difference, shear them, it is no felony. But if B knew them

to be the sheep of another person, and tried to conceal that fact; if, for instance, finding another's mark upon them, he defaced it, and put his own mark upon them, this would be evidence of felony. And a like conclusion may be drawn, when a party having possession of another's property, appears desirous of concealing it, or of preventing the inspection of the owner, or of any person who may make the discovery; or where, being asked, he denies having the property, though it is clear that he knew of its being in his possession. On the other hand, a mode of conduct of a different description, in these several respects, will be evidence to rebut any felonious intent. (*Ibid.*)

The circumstance of the goods being taken on a claim of right, may also negative any *animus furandi*. In one instance, indeed, a man may be guilty of felony in taking his own goods; namely, when having bailed them to another person, he afterwards steals them from such person, in order to charge him for them in an action, or robs the other person of them, in order to charge the hundred. But regularly, a man cannot commit felony of goods wherein he has a property. Thus, if A take away the trees of B, and cut them into boards, or, if A take the cloth of B, and make it into a doublet, B may take the boards or the cloth, and it will not be felony. So if A take the hay or corn of B, and mingle it with his own heap or cock, or take B's cloth and embroider it, B may retake the whole heap of corn or cock of hay, (*at least so much as cannot be easily distinguished from his own,*) and the garment with the embroidery, and such retaking shall be no felony. (*Ibid.*)

(4th.)—OF THE GOODS OF WHICH LARCENY MAY BE COMMITTED.

By the common law, larceny cannot be committed of things which savor of the realty, and are, at the time they are taken, a part of the freehold; whether they are of the substance of the land, as lead or other minerals; of the produce of the land, as trees, corn, grass, apples, or other fruits, or things affixed to the land, as buildings and articles, such as lead, &c,, annexed to buildings. The severance and taking of things of this description is, at common law, only a trespass. One reason for which doctrine (though it does not apply to the whole of the articles which have been enumerated,) is said to be that things which are a part of the freehold, being usually more difficult to remove, are less liable to be stolen; possibly, also, the doctrine may have proceeded upon certain subtleties in the legal notions of our ancestors; and it may, perhaps, in some measure, have originated in the greater security from private depredations of the things which were part of the freehold, than of those which were merely personal, in the earlier times, when articles of provisions and other personal chattels, (frequently the most valuable,) were carried from place to place by the individual tenants, in that attendance in camp which was exacted by their military tenures. (2 Russell, 136.)

But things, though they savor of the realty, may become the subjects of larceny by being severed from the freehold; thus, if stones be dug out of a quarry, wood be cut, fruit be gathered, or grass be cut, larceny may be committed of them; and thus will be the case, not only when they have been severed by the owner, but also by the thief himself, if there be an interval between his severing and taking them away; so that it cannot be considered as one continued act. If, therefore, the thief sever them at one time, whereby the trespass is completed, and they are converted into personal chattels, in the constructive possession of him on whose soil they are left or laid, and come again at another time, when they are turned into personalty, and take them away, it is larceny. Thus, though "if a thief severs a copper, and instantly carries it off, it is no felony at common law; yet if he let it remain after it is severed, any time, then the removal of it becomes a felony if he comes back and takes it; and so of a tree which has been sometime severed." (*Ib.*, 137.)

Larceny of Bonds, &c.—Whoever shall steal, or take by robbery, any bond, warrant, bill or promissory note, for the payment or securing the payment of any money, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars, are termed in law a *chose in action*, it shall be deemed and construed to be felony, if of or above the value of twenty dollars, and a misdemeanor if below the value of twenty dollars, in the same manner as it would have been if the offender had stolen, or taken by robbery, any other goods of the like value, with the money due on such bill, bond, warrant, or note, or secured thereby and remaining unsatisfied; and such offender shall suffer such punishment as he or she should or might have done, if he or she had stolen other goods of the like value with the moneys due on such bond, warrant, bill, or note, respectively, or secured thereby and remaining unsatisfied. (Gen. Stat., C. CXXIX., S. 8, p. 715.)

Larceny of Growing Crops.—Whoever shall steal from the field any grain or cotton, whether severed from the freehold or not, shall be deemed guilty of felony, and, on conviction thereof, shall be punished by imprisonment in the Penitentiary for not less than one year, nor more than five years, or in the jail for not less than three months, nor more than six months, or by a fine of not less than fifty dollars, nor more than five hundred dollars. (*Ibid*, Sec. 9; 17 Stat., 77.)

Whoever shall steal or take away any boat, periauger or canoe, or steal or take away any grappling, painter, rope sail or oar from any landing or place whatsoever, where the owners or persons in whose service or employ they were last in had made fast or laid the same, shall be liable to such fine or fines as the Court shall, in its discretion, think fit, if the matter of fact be felony or larceny. (*Ibid*, Sec. 10.)

Any simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or any article of personalty, of which,

by law, larceny may be committed; of all domesticated animals, and animals *feræ naturæ*, which have in any degree been subjected to the control of any owner; of all growing crops, or parts thereof; of all animal products of the soil, whether severed from the soil or not, and of all such fixtures and parts of the soil as were severed from the soil by an unlawful act, below the value of twenty dollars, shall be a misdemeanor, and considered a petit larceny. (*Ibid*, Sec. 12.)

Of Live Stock.—On and after the passage of this Act, any person found guilty of the larceny of any horse, mule, cow, hog or any other live stock, shall suffer imprisonment in the State Penitentiary at hard labor for a period of not less than one year, nor more than ten years, and such fine as the Court, in its discretion, may see fit to impose. (16 Stat., 632.)

Of Furniture.—Whoever shall take away with intent to steal, embezzle or purloin any chattel, bedding or furniture, which, by contract or agreement, he or they are to use, or shall be let to him or them to use, in or with lodging such taking, embezzling or purloining shall be, to all intents and purposes, taken, reputed and adjudged to be larceny and felony, and the offender shall suffer as in case of felony. (Gen. Stat., C. CXXIX, Sec. 15.)

With regard to domestic animals, such as horses, oxen, sheep, and the like, there is no doubt whatever that they were the subjects of larceny at common law. Domestic birds also, as ducks, hens, geese, turkeys, peacocks, &c., are clearly the subjects of larceny. So also larceny may be committed of their eggs or young. (2 Russell, 150.)

And as the stealing of such animals is larceny, it is also larceny to steal the produce of them, though taken from the living animals. Upon this ground it was holden by all the Judges, on a case reserved for their opinion, that milking a cow at pasture, and stealing the milk, was larceny. And it has also been holden, that larceny may be committed by pulling wool from the bodies of live sheep and lambs, with a felonious intent. (*Ibid.*)

Where the animals or other creatures are not domestic, but are *feræ naturæ*, larceny may, notwithstanding, be committed of them, if they are fit for the food of man, and dead, reclaimed, and known to be so, or confined. Thus, if hares or deer be so inclosed in a park, that they may be taken at pleasure; or fish in a trunk or net, or as it seems in any other enclosed place which is private property, and where they may be taken at any time, at the pleasure of the owner; or pheasants and partridges be confined in a mew; or pigeons be shut up in a pigeon-house; or swans be marked and pinioned, or (*though unmarked*) be kept tame in a mote, pond or private river; or if any of these creatures be dead, and in the possession of any one; the taking of them with felonious intent will be larceny. (*Ibid*, 151.)

But a different doctrine prevails with respect to animals and other creatures *feræ naturæ*, which are unreclaimed, as it is considered that no

person has a sufficient property in them to support an indictment for larceny. Thus, larceny cannot be committed of deer, hares, or coons, in a forest, chase, or warren; of fish in an open river or pond; of wild fowls, when at their natural liberty; of old pigeons, out of the dove-house, or even of swans, though marked, if they range out of the royalty, because it cannot be known that they belong to any person. But larceny may be committed of the flesh or skin of any of these or other creatures fit for food, when they are killed, because they are then reduced to a state in which a right of property in them may be claimed and exercised. (*Ibid.*)

There is yet another kind of animals to be noticed, namely, those which, though they may be reclaimed, are not such of which larceny may be committed by reason of the baseness of their nature. Some animals which, in this country are now usually tame, come within the class in question, as dogs and cats. And others which, though wild by nature, are often reclaimed by art and industry, clearly fall within the same rule: as bears, foxes, apes, monkeys, pole-cats, ferrets, and the like. The reason upon which this doctrine appears originally to have proceeded, is that creatures of this kind, for the most part wild in their nature, and not serving, when reclaimed, for food, but only for pleasure, ought not, however the owner may value them, to be so highly regarded by the law, that for their sakes a *man* should die. And the doctrine extends to the whelps, or young of such animals; the rule being established, that where no felony can be committed of any creatures that are *feræ naturæ*, though tame or reclaimed, it cannot be committed of the young of such creatures in the nest, kennel, or den. (*Ibid*, 153.)

5TH.—OF THE OWNERSHIP.

Joint tenants or tenants in common, have not an ownership, as against each other, upon which an indictment for larceny can be sustained. (2 Russell, 154.)

Nor has a husband such an ownership of his goods as against his wife, that she or any one, by her delivery, may commit larceny of them. (*Ibid*, 155.)

A man may, under particular circumstances, be guilty of larceny in stealing his own goods, as he may of robbery in taking his own property from the person of another. If A bail goods to B, and afterwards *animo furandi* take the goods from B, with an intent to charge him with the value of them, it is felony. And so if A, having delivered money to his servant to carry to some distant place, disguise himself, and rob the servant on the road, with intent to charge the hundred with the loss, according to the provisions of the Statute, it will be robbery in A, for as against persons so taking even their own goods, with a wicked and fraudulent intent, there is a sufficient temporary special property in the bailee or servant, to support an indictment. (*Ibid.*)

The real owner of goods will not be deprived either of the property or possession in law of them by a felonious taking. If, therefore, A steal the goods of B, and afterwards C steal the same goods from A, in such case C is a felon, both as to A and as to B, and he may be indicted for stealing the goods of B. Upon this subject, Gould, J., in delivering the opinion of the twelve judges in a modern case said: "It is a rule of law equally well known and established, that the possession of the true owner cannot be divested by a tortuous taking; and, therefore, if a person unlawfully take my goods, and a second person take them again from him, I may, if the goods were feloniously taken, indict such second person for the theft, and allege in the indictment, that the goods are my property; because these acts of *theft* do not change the possession of the true owner." And he further stated it to be his opinion, that the doctrine would also hold, where the goods are taken from the possession of the true owner by fraud; as otherwise a man might derive an advantage from his own wrong. (2 Russell, 156.)

There is no doubt that there may be a sufficient ownership of the goods stolen, in a person who has only a special property in them; and that they may be laid as the goods and chattels of such person in the indictment. A lessee for years, a bailee, a pawnee, a carrier and the like, have such special property; and the indictment will be good, if it lay the property of the goods, either in the real owners or in the persons having only such special property in them. So where goods belonging to a guest at an inn are stolen, they may be said to be the property either of the inn-keeper or the guest And linen stolen from a washerwoman by whom it was taken into wash in the course of her business, may be laid as her goods. In cases of this kind it is considered that the parties have a possessory property; being answerable to their employers, and being capable of maintaining an appeal of robbery or larceny, and having restitution. It has also been holden, that an agister of cattle has such a special property in them, that they may be laid as his goods in the indictment. When this case was referred to the Judges, after the conviction of the prisoner, there was at first some doubt upon the point, one of the Judges observing that an agister of cattle is not liable for them at all events, like an inn-keeper for the goods of his guest; but ultimately all the Judges agreed that the conviction was right. (*Ibid*, 157.)

Clothes and other necessaries provided for children by their parents, are often laid to be the property of the parents, especially while the children are of tender age; but it is holden good either way. There are cases, however, of exclusive property in the children Thus, in case where the prisoner was charged with stealing wearing apparel, the property of John Wilson, and it appeared in evidence that the wearing apparel had been furnished by John Wilson to his son George, and that the son was nineteen years of age, and bound apprentice to his father,

who had covenanted to find him in clothing, the Court held that the indictment was defective, and that the wearing apparel was exclusively the property of the son, who had been furnished with it in pursuance of the condition of the indentures. (*Ib.*, 160.)

But further, it is well settled that larceny may be committed by stealing goods, the owner of which is not known; and that it may be stated in the indictment that the things stolen were the goods of a person unknown. But upon prosecutions of this kind, some proof must be given sufficient to raise a reasonable presumption that the taking was felonious, or *invito domino;* and Lord Hale, C. J., said that he never would convict any person for stealing the goods *cujusdam ignoti*, merely because the person would not give an account how he came by them, unless there were proof made that a felony had been committed of those goods. It is said, therefore, with respect to these cases, that the true ground upon which persons so indicted, may, in any instance, claim to be acquitted when the other facts necessary to constitute the crime of larceny, appear upon the evidence, seems to be a want of the proper proof that the taking was felonious, or *invito domino*, and not want of any property in the true owner, who, by losing his goods, does not lose his property in them until seizure by some other person having a right to seize in such cases. (*Ib.*, 162.)

It should be well observed, however, with respect to prosecutions for stealing goods of a person unknown, that an indictment, alleging the goods to be the property of a person unknown, will be improper if the owner be really known; and in such case, the prisoner must be discharged if the indictment so framed, and tried upon a new one, for stealing the goods of the owner by name. In a case, where the prisoner was charged with stealing a box of goods from a stage coach, one of the counts of the indictment, which stated the box to be the property of persons unknown, was rejected by the Court, on the ground that when it was in the power of a pleader to state a legal proprietor, as in this case, by laying the property to be in the persons from whom and to whom the goods were sent; it was improper to lay the property as belonging to persons unknown. (*Ib.*)

II.—MIXED OR COMPOUND LARCENY,

Mixed or compound larceny, is such as has all the properties of simple larceny, but is accompanied with either one or both of the aggravations of a taking from one's *house* or *person*. (4 Bl. Com., 241.)

Larceny from the person is either—

1st.—By Open Assault, Usually Called Robbery.
2d.—By Privately Stealing.

1st.—OF ROBBEBY.

Definition.—Robbery is the felonious taking of money or goods of any value from the person of another, or in his presence, by violence, or putting in fear. (4 Bl. Com., 243.)

(1.)—Of the Taking from the Person or Presence of the Owner.
(2.)—Of the Violence or Putting in Fear.
(3.)—Of the Punishment.

(1.)—OF THE TAKING FROM THE PERSON OR PRESENCE OF THE OWNER.

The taking need not be immediately from the person of the owner; it will be sufficient if it be in his presence. Therefore, if A, upon being assaulted by a thief, throws his purse or cloak into a bush, and the thief takes it up and carries it away; or if, while A is flying from the thief, he lets fall his hat, and the thief takes it up and carries it away, such taking being done in the presence of A will be sufficient. So, if the thief having first assaulted A takes away his horse standing by him; or having put him in fear, drives his cattle in his presence, out of his pasture, he may be properly sued to take such property from the person of A, for he takes it openly and before his face, while under his immediate and personal care and protection. But it is clear that the property must be taken in the presence of the owner. And where it appeared, upon a special verdict, that some thieves gently struck the prosecutor's hand, whereby some money, which he had taken out from his pocket to give change, fell to the ground, and that, upon his offering to take it up, the thieves threatened to knock his brains out, upon which he desisted from taking up the money, and the thieves, "then and there immediately" took it up; a great majority of the Judges held, that even by this statement, it was not sufficiently expressed in the special verdict that the thieves took up the money in the sight or presence of the owner, and that they could not intend it, though there seemed to have been evidence enough to have warranted such a finding. (2 Russell, 66.)

3. OF THE VIOLENCE, OR PUTTING IN FEAR.

If it appear that the property be taken by either of these means against the will of the party, such taking will be sufficient to constitute robbery. The principle, indeed, of robbery, is violence; but it has been often holden, that actual violence is not the only means by which a robbery may be effected, but that it may also be effected by fear, which the law considers as constructive violence. (*Ibid*, 67.)

With respect to the degree of actual violence, where the taking is effected by that means, it appears to be well settled, that a sudden taking or snatching from a person, unawares, is not sufficient. Thus, where a boy was carrying a bundle along the street in his hand, after it was dark, when the prisoner ran past him and snatched it suddenly away, it was holden that the act was done not with the degree of force and terror necessary to constitute robbery. And the same was holden in a case, where it appeared that as two little boys were carrying a parcel of cloth

to one of the inns at Bath, for the purpose of its being carried by a stage coach to London, the prisoner came up suddenly, snatched the cloth from the head of one of them, and ran off with it. The same doctrine was also holden in two other cases, in one of which, the hat and wig of a gentleman were snatched from his head in the street, and in the other, an umbrella was snatched suddenly out of the hand of a woman, as she was walking along the street. But if any injury be done to the person, or there be any struggle by the party to keep possession of the property before it be taken from him, there will be a sufficient actual violence. Thus, where an ear-ring was snatched from a lady's ear, and the ear torn through, and blood drawn by the force used, it was holden to be robbery. So, where a heavy diamond pin, with a cork screw stalk, twisted very much in a lady's hair, which was close frizzed and strongly crapêd, was snatched out, and part of the hair torn away at the same time, it was holden that this was a sufficient degree of violence to constitute robbery. And in a case, where it appeared that the prisoner snatched at a sword, while it was hanging at a gentleman's side, and that the gentleman, perceiving him get hold of the sword, instantly laid tight hold of the scabbard, which occasioned a struggle between them, in which the prisoner got possession of the sword, and took it away; the Court held this was a robbery. (*Ibid*, 68.)

Where violence is made use of, to obtain the property with a felonious intent, it seems that it will not the less amount to robbery, on account of the thief having recourse to some colorable or specious pretence, in order the better to effect his purpose. One Merriman, who was taking cheeses along the highway in a cart, was stopped by a person named Hall, who insisted upon seizing them for want of a permit. This was a mere pretence, no permit being necessary. After some altercation, Merriman and Hall agreed to go before a magistrate, to determine the matter; and during Merriman's absence, other persons riotously assembled, on account of the dearness of provisions, and, in confederacy with Hall, for the purpose, carried away the goods. It was objected, (upon an action against the hundred, on the Statutes of hue and cry,) that this was no robbery, because there was no force; but Hewit J., over-ruled the objection, and left the case to the jury, who were of opinion that Hall's conduct, in insisting upon seizing the cheese for want of a permit, was a mere pretence for the purpose of defrauding Merriman, and found that the offense was robbery; which was afterwards confirmed by the Court of King's Bench, on a motion for a new trial. (*Ibid.*)

Gascoigne's Case.—Where a bailiff hand-cuffed a woman, under pretence of carrying her to prison with greater safety, and by violence extorted money from her, when so hand-cuffed, it was holden to be robbery. (*Ibid.*)

The fear of injury to the person is that which is commonly excited on the commissions of this offense; and where property is obtained by these means, it will amount to robbery, though there be no great degree

of terror or affright in the party robbed. It is enough, if the fact be attended with such circumstances of terror; such threatening by word or gesture, as in common experience, are likely to create an apprehension of danger, and induce a man to part with his property for the safety of his person. And it is not necessary that actual fear should be strictly and precisely proved; as the law *in odium spoliatoris* will presume fear where there appears to be just ground for it. (*Ibid*, 72.)

One Norden, having been informed that one of the early stage coaches had been frequently robbed near the town, by a single highwayman, resolved to use his endeavors to apprehend the robber. For this purpose he put a little money and a pistol into his pocket, and attended the coach in a post-chaise, till the highwayman came up to the company in the coach and to him, and presenting a weapon demanded their money. Norden gave him the little money he had about him, and then jumped out of the chaise with the pistol in his hand, and, with the assistance of some others, took the highwayman. This was holden to be a robbery of Norden. (*Ibid.*)

The fear necessary to constitute the crime of robbery may exist, though the property be taken under color, and on the pretense of a purchase. For, if a person by force or threats, compel another to give him goods, and by way of color oblige him to take, or if he offer less than the value, it is robbery. As where the prisoner took a quantity of wheat worth eight shillings, and forced the owner to take thirteen pence half penny for it, threatening to kill her if she refused, the offense was clearly holden to be robbery by all the Judges upon a conference. But whether the forcing of a chapman to sell his wares, and giving him the full value for them, will amount to a robbery, has been considered as doubtful. (*Ibid.*)

It seems that the fear of violence to the person of a child of the party from whom property is demanded, will fall within the same consideration as if the fear were of violence to the person of the party himself. Thus, where a case was put in argument, of a man walking with his child, and delivering his money to another person upon a threat, that unless he did so, the other would destroy his child. Hotham, B. said, that he had no doubt that it would be robbery. And in a subsequent case, Eyre, C. J., said, that a man might be said to take by violence, who deprived the other of the power of resistance, by whatever means he did it, and that he saw no sensible distinction between a personal violence to the party himself, and the case put by one of the Judges, of a man holding another's child over a river, and threatening to throw it in unless he gave him money. (*Ibid.*)

The cases in which the offense of robbery has been committed, by means of a fear of injury to the property of the party, are principally those in which the terror excited was of the probable outrages of a mob. As a threat to tear the mow of corn, and level the house of the prosecutor; or where money is extorted by the prisoner at the head of a mob,

without any particular threat being expressed; or by threat of destroying the house, or by threat of taking corn away, by which the prosecutor was compelled to sell it for less than its value; or where money is obtained by a threat, that the house of the prosecutor should be pulled down by a mob at a future time. (*Ibid*, 72 and 74.)

The cases of robbery in which the robbery has been obtained by means of a fear being excited, of injury to the character of the party robbed, appear to be all of one description. Indeed, it has been said, that the terror that leads a party to apprehend an injury to his character, has never been deemed sufficient to support an indictment for robbery, except in the particular instance of its being excited by means of insinuations against, or threats to destroy the character of the party pillaged, by accusing him of sodomitical practices. The fear of being sent to prison, is not alone a sufficient ground of terror to constitute robbery. (*Ibid*, 75.)

But parting with property upon the charge of an unnatural crime, will not make the taking a robbery, if it is parted with not from fear of loss of character, but for the purpose of prosecuting the offender. The prisoner applied to Fry to lend him ten shillings, and upon his refusal, threatened to charge him with an unnatural crime, and got from him one pound ten shillings Fry parted with it from an anxiety that his master's family might not be disturbed, and in expectation that he might secure the prisoner; and he immediately stated the circumstances to his master and to a friend, and planned with them what he should do in case of the prisoner applying again. The prisoner did apply again, and Fry, fixed to meet him, marked some money, engaged a constable, and, having met the prisoner, gave him the money, and had him apprehended. He parted with his money in order that he might prosecute, because he knew himself innocent, and not from the threats. Upon a case reserved, the Judges held that this taking did not constitute a robbery, and the prisoner was recommended for a limited pardon. (*Ib.*, 87.)

(3d).—OF THE PUNISHMENT.

By 23d Henry VIII, C. 1st, and by 3 and 4 W. and M, C. 9, robbery in a dwelling house, or in or near a highway, is felony and was punished with death, without benefit of clergy. This offense is now punished by imprisonment in the State Penitentiary.

Privily Stealing from the Person.

The offense of privily stealing from the person, shall, in all cases, be deemed and adjudged grand larceny, and subject to the same punishment. (Gen. Stat., C. CXXIX, S. 16, p. 717.)

FORMS.

FORM NO. 152.—WARRANT OF ARREST FOR SIMPLE LARCENY.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

By A. B., Trial Justice, in and for the said County and the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by C. D., that at ——— in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E. F., did feloniously steal and carry away, (*here state what,*) of the value of about —— dollars, of the proper goods and chattels of him (*or her,*) the said C. D.

These are, therefore, to command you to apprehend the said defendant, E. F., and bring —— before me to be dealt with according to law.

Given under my hand and seal this —— day of ———A. D. 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

Personally appeared before me A. B., a Trial Justice in and for the said County and the said State, C. D., who being duly sworn says: That at ———, in the County and State aforesaid, on the —— day of ———, A. D. 18—, one E. F., did feloniously steal and carry away, (*here state what, describing the same,*) of the value of —— dollars, of the proper goods and chattels of him (*or her,*) the said C. D.

That X., Y. and Z. are material witnesses thereto.

C. D.

Sworn to before me this ——— day of ——— 18 —.

A. B.,
Trial Justice.

LIBEL.

A libel is such an immodest, indecent, and immoral publication, as tends to corrupt the mind and destroy the love of decency, morality, and good order; or, it is a malicious defamation of any person made public by printing, writing, signs, or pictures, tending to blacken the

memory of the dead, with intent to provoke the living, or to injure the reputation of the living, provoke him to wrath, or expose him to hatred, contempt, or ridicule. (1st Russ., 209, and 6th Am. C. L., 425.)

1st.—Difference between Libel and Slander.
2d.—Libellous Words, and Mode of Expression.
3d.—Of the Publication, and Persons Concerned Therein.
4th.—The Circumstances which will Prevent a Publication from being Libellous.
5th.—Of the Malice.
6th.—Of the Punishment.

1st.—DIFFERENCE BETWEEN LIBEL AND SLANDER.

It does not follow that the libel is not actionable, because words of similar import, when spoken, are held not to be so; for the rule with respect to written slander is different from that which prevails when it is only verbal Words to be actionable when spoken of a person not in any office, trade or profession, must imply the imputation of an offense which would subject him to corporal or other infamous punishment; but words, when written, if they tend to degrade or disgrace, or to render odious or ridiculous the person of whom they are written, will be libellous, and consequently actionable. This distinction between written and verbal slander is abundantly established by the most unquestionable authority. (Austin *vs.* Culpepper, 2d Show, 314; Warner *vs.* Ellizer, 1st Keb., 293.)

An action lies for scandalizing a man by words, which, if spoken, would not subject him to prosecution. (*Ibid.*)

And words which, when spoken, may be considered not defamatory, are, when reduced to writing. (Thorley *vs.* Lord King, 4th Taun., 355.)

As to say a man is dishonest is not actionable, but when published they become so. (Rex *vs.* Smith, Skin., 124.)

So also is slander, the defendant may justify that the words spoken are true; but on indictment for libel, it is immaterial whether the matter be true or false, since the provocation, and not the falsity, is to be punished criminally. (4th B. C., 151.)

2d.—LIBELLOUS WORDS, AND MODES OF EXPRESSION.

To constitute a libel, the words published must be such as, in the common estimation of mankind, are calculated to reflect shame and disgrace upon the person concerning whom they are written. (Fenville *vs.* McNease, Dud., 303.)

Of the Modes of Expression.—A libel may be as well by descriptions and circumlocution as in express terms; therefore, scandal conveyed by way of allegory or irony amounts to a libel, as where a writing, in a taunting manner, reckoning up several acts of public charity done by a person, said: "You will not play the Jew, nor the hypocrite,"

and then proceeded, in a strain of ridicule, to insinuate that what the person did was owing to his vain glory. Or where a publication, pretending to recommend to a person the characters of several great men for his imitation, instead of taking notice of what great men are generally esteemed famous for, selected such qualities as their enemies accuse them of not possessing; (*as by proposing such a one to be imitated for his courage, who was known to be a great statesman, but no soldier; and another to be imitated for his learning, who was known to be a great general, but no scholar;*) such a publication being as well understood to mean only to upbraid the parties with the want of these qualities, as if it had done so directly and expressly. And, upon the same ground, not only an allegory but a publication in hieroglyphics, or a rebus or anagram, which are still more difficult to be understood, may be a libel; and a Court, notwithstanding its obscurity and perplexity, shall be allowed to judge of its meaning, as well as other persons. And it is now well established, that slanderous words must be understood by the Court in the same sense as the rest of mankind would ordinarily understand them. Formerly, it was the practice to say that words were to be taken in the more lenient sense; but that doctrine is now exploded; they are not to be taken in the more lenient or severe sense, but in the sense which fairly belongs to them, and which they are intended to convey. (1st Russ., 210.)

Name in Blanks.—Upon the same principles, it has been resolved that a defamatory writing, expressing only one or two letters of a name, in such a manner that from what goes before, and follows after, it must needs be understood to signify a particular person, in the plain, obvious and natural construction of the whole, and would be nonsense if strained to any other meaning, is as properly a libel as if it had expressed the whole name at large; for it brings the utmost contempt upon the law to suffer its justice to be eluded by such trifling evasions; and it is a ridiculous absurdity to say that a writing, which is understood by every one of the meanest capacity, cannot possibly be understood by a Judge or jury. (*Ibid.*)

The most simple idea of a libel, is where defamatory malice is reduced to writing. But it may also be by the exhibition of a picture, fixing a gallows at a man's door, burning him in effigy, or exhibiting him in any ignominious manner. (4th Bl. Com., 149. Note.)

3d.—OF THE PUBLICATION, ETC.

No one is indictable for writing a libel unless he actually publish it to the world; but the communication thereof to any one person is a publication in the eye of the law, and therefore the sending an abusive letter to a private person, is as much a libel as if it were openly printed. (2d Tomlins, 432.)

But in the case of Fonville *vs.* McNease, it was held that such sealed

letter, though good ground for indictment, would not sustain a civil action for damages. (Dudley, 303.)

Of the making and publication of a libel.—If one man repeats a libel, another writes it, and a third approves what is written, they will all be makers of the libel; and it may be laid down generally that all who are concerned in composing, writing and publishing a libel, are guilty of the misdemeanor, unless the part they had in the transaction was a lawful or an innocent act; and ignorance has been held not to excuse. Thus, upon an information against the defendant, for printing and publishing a libel, the evidence was, that he acted as servant to the printer, and clapped down the press; and few or no circumstances were offered of his knowing the import of the paper, or being conscious that he was doing anything illegal; and Raymond C. J., held, that this made the defendant guilty, and so the jury found him. But there must be a publication; and the mere writing or composing a defamatory paper by any one which is confined to his closet, and neither circulated nor read to others, will not render him responsible; nor will he be held to have published the paper, if he deliver it by mistake, out of his study. And it will not be a publication of a libel if a party takes a copy of it, provided he never publishes it; but a person who appears once to have written a libel, which is afterwards published, will be considered as the maker of it, unless he rebut the presumption of law by showing another to be the author, or prove the act to be innocent in himself. For by Holt, C. J., if a libel appears under a man's hand-writing, and no other author is known, he is taken in the manner, and it turns the proof upon him; and if he cannot produce the composer, it is hard to find that he is not the very man. (1st Russ., 234.)

The reading of a libel in the presence of another, without previous knowledge of its being a libel, or the laughing at a libel read by another, or the saying that such a libel is made by J. S., whether spoken with or without malice, does not amount to a publication. And it has also been held, that he who repeats part of a libel in merriment, without any malice or purpose of defamation, is not punishable; though this has been doubted. But it seems to have been agreed, that if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it, in the presence of others, or lend or show it to another, he is guilty of an unlawful publication of it. In a late case, however, of an action for a libel contained in a caricature print, where the witness stated that having heard that the defendant had a copy of this print, he went to his house and requested liberty to see it, and that the defendant thereupon produced it, and pointed out the figure of the plaintiff and the other persons it ridiculed; Lord Ellenborough, C. J., ruled, that this was not sufficient evidence of publication to support the action.

Proof that the libel was contained in a letter directed to the party, and delivered into the party's hands, is sufficient proof of a publication

upon an indictment or information. And delivering a libel sealed, in order that it may be opened and published by a third person in a distant country, is a publication. (*Ibid*, 235.)

Procuring Another to Publish.—It seems to be agreed, that not only he who publishes a libel himself, but also he who procures another to do it, is guilty of the publication; and it is held not to be material whether he who disperses a libel knew anything of the contents or effects of it or not, for that nothing would be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher would make him safe in dispersing them. (*Ibid*, 236.)

Publications by Book-Sellers and Proprietors of Newspapers.—Upon this foundation it has for a long time been held, that the buying of a book or paper containing libellous matter, in a book-seller's shop, is sufficient evidence to charge the master with the publication, although it does not appear that he knew of any such book being there, or what the contents thereof were, and though he was not upon the premises, and had been kept away for a long time by illness; and it will not be presumed that it was bought and sold there by a stranger; but the master must, if he suggests anything of this kind in his excuse, prove it. So the proprietor of a newspaper is answerable criminally as well as civilly for the acts of his servants in the publication of a libel, although it can be shown that such pub ication was without the privity of the proprietor. These acts are done in the course of the trade or business carried on by the master. But in a case of an action for a libel, where it appeared upon the evidence that the defendant, a tradesman, was accustomed to employ his daughter to write his bills and letters, that a customer, to whom a bill, written by the daughter, had been sent by the daughter, sent it back on the ground of the charge being too high, and that the bill was afterwards returned to the customer, enclosed in a letter also written by the defendant's daughter, and being a libel upon the plaintiff, who had inspected and reduced the bill for the customer, it was holden that this was not sufficient evidence to go to a jury, either of command, authority, adoption, or recognition by the defendant. (*Ibid.*)

THE CIRCUMSTANCES WHICH WILL PREVENT A PUBLICATION FROM BEING LIBELLOUS.

Petitions to Parliament and other authorized proceedings.—It has been resolved, that no false or no scandalous matter contained in a petition to a committee of Parliament, or in articles of the peace exhibited to justices of the peace, or in any other proceeding in a regular course of justice, will make the complaint amount to a libel; for it would be a great discouragement to suitors to subject them to public prosecution in respect of their application to a Court of Justice. Thus, where a charge was, that the defendant, in a certain affidavit before the Court, had

said that the plaintiff in a former affidavit against the defendant had sworn falsely, the Court held that this was not libellous; for in every dispute in a Court of Justice, when one by affidavit charges a thing, and the other denies it, the charges must be contradictory, and there must be affirmation of falsehood. It is also held that no presentment of a grand jury can be a libel, not only because persons are supposed to be returned without their own seeking, and are sworn to act impartially, shall be presumed to have proper evidence for what they do, but also because it would be of the utmost ill-consequence in any way to discourage them from making their inquiries with that freedom and readiness which the public good requires. Where an action was brought against the president of a military Court of Inquiry, for a libel contained in the minutes of such Court, which had been delivered by the defendant to the commander-in-chief, and deposited in his office, it was held that these minutes were a privileged communication, and properly rejected when tendered at the trial in proof of the alleged libel; and also, that a copy of them had been properly rejected. And where a Court martial, after stating in their sentence the acquittal of an officer against whom a charge had been preferred, subjoined thereto a declaration of their opinion, that the charge was malicious and groundless, and that the conduct of the prosecution in falsely caluminating the accused, was highly injurious to the service, it was held that the president of the court martial was not liable to an action for a libel for having delivered such sentence and declaration to the Judge Advocate; and Mansfield, C. J., in delivering his opinion, said, "if it appear that the charges were absolutely without foundation, is the president of the court martial to remain perfectly silent on the conduct of the prosecutor; or can it be any offense for him to state that the charge is groundless and malicious?" (1st Russell, 213.)

Publications Investigating Official Conduct of Officers.—In prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall be the judges of the law and the facts. (Const. S. C., Art. I., Sec. 8.) See 21

Where words charged as libellous are uttered in a judicial proceeding and constitute the necessary information for obtaining a search warrant, an action for a libel cannot be sustained. The information is a part of the proceeding, and cannot be considered as a libellous publication. If the proceeding originated in malice, and without any reasonable or probable cause, the remedy is an action in the case, for maliciously suing out a search warrant. (Vausse *vs.* Lee, 1st Hill, 197.)

How far Publication of Proceedings in Courts of Justice Allowed.—It has always been held, that a publication of the proceedings in a Court of Justice will not be protected, unless it be a true and honest statement of those proceedings. But, provided it were of that character, the doe-

trine seems at one time to have been, that it might be made to the full extent of stating what had actually taken place More recently, however, it has been said, that it must not be taken for granted that the publication of every matter which passes in a Court of Justice, however truly represented, is, under all circumstances, and with whatever motive published, justifiable; and that such doctrine must be taken with grains of allowance. And Lord Ellenborough, C. J., said: "It often happens that circumstances necessary for the sake of public justice, to be disclosed by a witness in a judicial inquiry, are very distressing to the feeling of individuals on whom they reflect; and if such circumstances were afterwards wantonly published, I should hesitate to say that such unnecessary publication were libellous, merely because the matter had been given in evidence in a Court of Justice" In a subsequent case, not relating directly to this point, but to the publication of proceedings in Parliament, Bailey, Judge, said: "It has been argued that the proceedings of Courts of Justice are open to publication. Against that, as an unqualified proposition, I enter my protest. Suppose an indictment for blasphemy, or a trial where indecent evidence was necessarily introduced, would every one be at liberty to poison the minds of the public, by circulating that, which, for the purposes of justice, the Court is bound to hear? I should think not; and it is not true, therefore, that in all instances, the proceedings of a Court of Justice may be published. Again, it may be said that counsel have a right, in pursuance of their instructions, and whilst the cause is going on, to endeavor to produce an effect, by making such observations on the credit and character, and credit of parties and their witnesses, as sometimes, when the cause is over, perhaps they are sorry for. But have they, therefore, or any person who hears them, a right afterwards to publish those observations? I have no hesitation in saying, that when the occasion ceased, the right also would cease; and that it would be no justification to plead that such a publication was a transcript of the counsel's speech." (1st Russell, 214.)

The doctrine was recognized and acted upon in a recent case. The defendant's husband had been convicted of publishing a blasphemous libel, after having in his defense at the trial used arguments and statements of a blasphemous and indecent description. His wife published the trial; and upon showing cause against a rule for criminal information, it was urged that she had a right to publish what actually took place in a Court of justice; but the Court were clear she had not, if that statement contained anything defamatory, seditious, blasphemous, or indecent; and the rule was made absolute. And where it is allowed to publish what passes in a Court of justice, the party must publish the whole case, and not merely state the conclusion which he himself draws from the evidence. Thus, where the libel stated in the declaration purported to be a speech of counsel at a trial of the plaintiff on a criminal charge, and, after setting out the speech, said that a witness was

called who proved all that had been stated by counsel, and that the defendant was immediately afterwards acquitted upon a defect in proving some matter of form; and the plea stated that in fact such a speech was made, and that the witness called proved all that had been so stated, but it did not set out the evidence or justify the truth of the charges made in the counsel's speech; it was holden that such plea was bad, inasmuch as a party could not be justified in publishing the result of evidence given in a Court of justice, but must state the evidence itself. And the party making the publication will not be justified, unless he confines himself to what actually passed in Court. In a case where an action was brought for a libel concerning the plaintiff in his profession as an attorney, and the libel, as stated in the declaration, began, "shameful conduct of an attorney," and then proceeded to give an account of proceedings in a Court of law which contained matter injurious to the plaintiff's professional character, and the defendant had pleaded that the supposed libel contained a true account of the proceedings in the Court of law; it was holden (*after verdict for the defendant*), that the plea was bad, inasmuch as the words, "shameful conduct of an attorney," formed no part of the proceedings in the Court of law, and that the plaintiff was entitled to judgment. (*Ibid*, 215.)

Publication of ex parte Examination may be Libellous.—It should be observed also, that the publication of preliminary examinations before a magistrate, taken *ex parte*, will not come within the principle by which the fair reports of proceedings in Courts of justice have been held to be privileged. Such publications have a tendency to cause great mischief by perverting the public mind, and disturbing the course of justice; and, if they contain libellous matter, will be considered as highly criminal. And the Court of King's Bench has gone to the extent of granting a criminal information for publishing in a newspaper a statement of the evidence given before a coroner's jury, accompanied with comments; although the statement was correct, and the party had no malicious motive in the publication. (*Ibid*, 216.)

Comments upon Literary Productions.—A publication commenting upon a literary work, exposing its follies and errors, and holding up the author to ridicule, will not be deemed a libel, provided such comment does not exceed the limit of fair and candid criticism, by attacking the character of the writer, unconnected with his publication; and every one has a right to publish a comment of this description. But if a person, under the pretence of criticising a literary work, defames the private character of the author, and, instead of writing in the spirit and for the purpose of fair and candid discussion, travels into collateral matter, and introduces facts not stated in the work, accompanied with infamous comments upon them, such person is a libellor. A fair and candid comment on a place of public entertainment, in a newspaper, is not a libel. (*Ibid*, 230.)

Confidential Communications.—Confidential communications are in some cases privileged. As where it was holden that a letter written confidentially to persons who employed A as their Solicitor, conveying charges injurious to his professional character in the management of certain concerns which they had entrusted to him, and in which B, the writer of the letter, was likewise interested, was not a libel. And if a person, in a private letter to the party, shou'd expostulate with him about some vices, of which he apprehends him to be guilty, and desires him to refrain from them; or if a person should send such a letter to a father, in relation to some faults of his children, these, it seems, wou'd not be considered as libellous, but as acts of friendship, not designed for defamation, but reformation. But this doctrine must be applied with some caution; since the sending of an abusive letter, filled with provoking language to another, is an offense of a public nature, and punishable as such, inasmuch as it tends to create ill-blood, and causes a disturbance of the public peace; and the reason assigned by Lord Bacon, why such private letter should be punishable, seems to be a very sufficient one, namely, that it enforces the party to whom the letter is directed to publish it to his friends, and thus induces a compulsory publication. And though a letter written by a master, in giving a character of a servant, will not be libellous, unless its contents be not only false, but malicious; yet in such a case malice may be inferred from the circumstances. (*Ibid*, 231.)

Commuication Made Bona Fide or with a view of Investigating a fact or in Course of a Proceeding.—Although that which is written may be injurious to the character of another, yet if done *bona fide* or with a view of investigating a fact in which the party making it is interested, it is not libellous. Thus, where an advertisement was published by the defendant at the instigation of A, the plaintiffs wife, for the purpose of ascertaining whether the plaintiff had another wife living when he married A, it was holden that although the advertisement might impute bigamy to the plaintiff, yet having been published under such authority and with such view, it was not libellous. And if the communication be made in the regular and proper course of a proceeding, it would not be libellous. As where a writing containing the defendant's case and stating that some money due to them from the government for furnishing the guard at Whitehall with fire and candles had been improperly obtained by a Captain C, was directed to a general officer and the four principal officers of the guards, to be presented to his Majesty for redress, all information was refused, on the ground that the writing was no libel, but a representation of an injury drawn up in a proper way for redress, without any intention to asperse the prosecutor, and that though there was a suggestion of fraud, yet that is no more than is contained in every bill in chancery, which is never held libellous if relative to the subject matter So a petition addressed by a creditor of an officer in the army to the Secretary of War, *bona fide*

and with the view of obtaining, through his interference, the payment of a debt due, and containing a statement of facts which, though derogatory to the officers character, the creditor believed to be true, is not a malicious libel, for which an action is maintainable. And where the defendant, being deputy-governor of Greenwich hospital, wrote a large volume, containing an account of the abuses of the hospital and treating the characters of many of the officers of the hospital (*who were public officers*) and Lord Sandwich in particular, who was the first Lord of the Admiralty with much asperity, and printed several copies of it, which he distributed to the governors of the hospital only, and not to any other person; the rule for an information was discharged.

Lord Mansfield said, that this distribution of the copies to the persons only who were from their situations called on to redress these grievances, and had, from their situations, competent power to do it, was not a publication sufficient to make the writing a libel. And where the publication is an admonition, or in the course of the discipline of a religious sect, as the sentence of expulsion from a society of Quakers, it is not libellous And it has been decided that an action will not be for words innocently read, as a story out of a book, however false and defamatory they may be. Thus, where a clergyman in a sermon, recited a story out of Fox's Martyrology, that one G being a perjured person, and a great persecutor, had great plagues inflicted upon him, and was killed by hand of God; whereas in truth he never was so plagued; and was himself actually present at the discourse; the words being delivered only as a matter of history and not with any intention to slander, it was adjudged for the defendant. (*Ibid.*)

5TH—OF THE MALICE.

Criminal Intention of Defendant.—The criminal intention of the defendant will be a matter of inference from the nature of the publication. In order to constitute a libel, the mind must be in fault, and show a malicious intention to defame; for, if published inadvertently, it will not be a libel; but where a libellous publication appears, unexplained by any evidence, the jury should judge from the overt act; and where the publication contain a charge slanderous in its nature, should from thence infer that the intention was malicious The intention may be collected from the libel, unless the mode of publication, or other circumstances explain it; and the publisher must be presumed to intend what the publication is likely to produce; so that if it is likely to excite sedition, he must be presumed to have intended that it should have that effect. Publishing what is a libel, without excuse, is indictable, though the publisher be free from what in common parlance, is called malice; for defaming wilfully, without excuse, is in law, malicious. (*Ib.*, 243.)

6TH.—OF THE PUNISHMENT.

The punishment of libellers, for either making, repeating, printing or publishing the libel, is fine, and such corporal punishment as the Courts in its discretion shall inflict, regarding the quality as the offense and the quality of the offender. (1 Hawk, P. C., 357.)

Civil action for libel cannot be brought in a Court of Trial Justice. (See Courts of Trial Justices.)

LICENSE.

(*See Hawkers, Pedlars and Retailers.*)

LIEN.

1ST.—ON CROPS, FOR WAGES. (*See Laborers.*)
2D —ON BUILDINGS.

(1.)—Who may have such Liens, and when it shall Attach.
(2.)—How Enforced.
(3.)—Principles of Determination.
(4.)—Forms.

1.—WHO MAY HAVE SUCH LIEN AND WHEN IT SHALL ATTACH.

Party Furnishing Labor and Materials.—Any person to whom a debt is due for labor performed or furnished, or for materials furnished and actually used in the erection, alteration or repair of any building or structure upon any real estate, by virtue of an agreement with, or by consent of, the owner of such building or structure, or any person having authority from, or rightfully acting for such owner, in procuring or furnishing such labor or materials, shall have a lien upon such building or structure, and upon the interest of the owner thereof in the lot of land upon which the same is situated, to secure the payment of the debt so due to him, and the costs which may arise in enforcing such lien under this Chapter, except as is provided in the following Sections. (Gen. Stat., C. CXX., S. 7, p. 550.)

Lien not to attach without notice.—Such liens for materials furnished shall not attach, unless the person furnishing the same, before so doing, gives notice to the owner of the property to be affected by the lien, if such owner is not the purchaser, that he intends to claim such lien. (*Ib.*, S. 8.)

Not of force against existing mortgage.—Such lien shall not avail or be of force against any mortgage actually existing and duly recorded prior to the date of the contract under which the lien is claimed. (*Ib.*, S. 9.)

Not to attach, if owner, &c., gives notice.—The owner of any such building or structure in process of erection, or being altered or repaired, other than the party by whom or in whose behalf a contract for labor or materials has been made, may prevent the attaching of any lien for labor thereon, not at the time performed, or materials not then furnished, by giving notice, in writing, to the person performing or furnishing such labor, or furnishing such materials, that he will not be responsible therefor. (*Ib.*, S. 10.

Dissolved unless party file statement of account, &c., in Clerk's office in thirty days; record.—Such lien shall be dissolved, unless the person desiring to avail himself thereof, within thirty days after he ceases to labor on, or furnish labor, or materials for such building or structure, files in the office of the Clerk of Court of Common Pleas of the County in which the same is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate for identification with the name of the owner or owners of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and shall be recorded in a book kept for the purpose by the Clerk, who shall be entitled to the same fees therefor as for recording mortgages of equal length. (*Ib.*, S 11.)

Not to be invalidated by inaccuracy of statements, &c.—No inaccuracy in such statement, relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor and materials, shall invalidate the proceedings, unless it appears that the person filing the certificate has wilfully and knowingly claimed more than is his due. (*Ibid* S. 12).

Lien dissolved if suit not begun in 90 days.—Unless a suit for enforcing the lien is commenced within ninety days after the person desiring to avail himself thereof ceases to labor on, or furnish labor or material for, such building or structure, the lien shall be dissolved. (*Ib.*, S. 13.)

2ND.—HOW ENFORCED.

May be enforced before Court of Trial Justice.—When the amount of the claim does not exceed one hundred dollars, the lien may be enforced by a petition to a Trial Justice; and such Trial Justice shall have like power and authority within his jurisdiction as herein conferred upon the Court of Common Pleas, with like rights of appeal to the parties as exist in other civil cases. (*Ib.*, S. 15.)

Petition Inserted in Summons, &c.—The petition may be inserted in a summons, and be served, returned and entered as other civil cases. (*Ibid*, Sec. 16.)

What Petition Shall Contain.—Whether filed as a petition, or inserted in such summons, the petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises subject to the lien, and all other natural facts and circumstances; and shall pray that the premises may be sold, and that the proceeds of the sale be applied to the discharge of the demand. (*Ibid*, Sec. 17.)

The petition should aver:

1st.—The doing of the work or furnishing the materials.

2d.—That notice was filed.

3d.—That defendant is the owner.

4th.—That the work was done or materials delivered, in pursuance of a contract and in conformity therewith.

5th.—It should describe the premises in such manner, that the Sheriff or Constable, in the event of the defendants having more than one building in the locality, would be able to determine by the judgment, beyond doubt, the premises to be sold. (Voorhees, N. Y. Code, p. 178.)

Amendments.—The Court may, at any time, allow either party to amend his pleadings as in other civil actions. —(Gen, Stat., C. CXX S. 18.)

Any Number who may have labored on same building, may join in Petition.—Any number of persons who have actually performed labor, or furnished labor or materials on one or more buildings or structures upon different lots of land, where the labor was performed for the same owner, contractor, or other person, may join in the same petition for their respective liens, and the same proceedings shall be had in regard to the rights of each petitioner, and the respondent may defend as to each petitioner, in the same manner as if he had severally petitioned for his individual lien. (*Ibid*, 19.)

Notice to Owner and Other Creditors.—The Court in which the petition is entered, shall order notice to be given to the owner of the building or structure, that he may appear and answer thereto at a certain day, in the same term, or at the next term, by serving him with an attested copy of the petition, with the order of the Court thereon, fourteen days, at least, before the time assigned for the hearing; and the Court shall also order notice of the filing of the petition to be given to all other creditors who have a lien of the same kind upon the same estate, by serving them with a copy of the last mentioned order in like manner. (*Ibid*, S. 20.)

To Absent Parties.—If it appears to the Court that any of the parties entitled to notice are absent, or that they cannot probably be found, to be served with the notice, the Court may, instead of the personal notice before mentioned, or in addition thereto, order notice to all persons interested, by publishing in some newspaper the substance of the petition, with the order of the Court thereon, assigning the time and place for a

hearing, or may order such other notice to be given, as may, under the circumstances of the case, be considered most proper and effectual. (*Ibid*, S 21.)

Further Notice.—If, at the time assigned for the hearing, it appears to the Court that any of the persons interested had not had a sufficient notice of the suit, the Court may order further notice to them, in such manner as may be considered most proper and effectual. (*Ibid*, S. 22.)

Claims may be Proved and Contested.—At the time assigned for the hearing, or within such further time as the Court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property, may appear and prove his claim; and the owner and each of the creditors may contest the several claims of every other creditor, and the Court shall hear and determine them in a summary manner, either with or without jury, as the case may require. (*Ibid*, S. 23.)

The Jury.—Every material question of fact may be submitted to a jury, which may be had as in other civil cases, before a Trial Justice. (*Ibid*, S. 24.)

(3.)—PRINCIPLES OF DETERMINATION.

Claims not Payable Allowed with Rebate of Interest.—The Court shall ascertain and determine the amount due to each creditor, who has a lien of the kind before mentioned, upon the property in question and every such claim due, absolutely and without any condition, although not then payable, shall be allowed, with a rebate of interest to the time when it would become payable. (*Ibid*, S. 25.)

Claims for Part Performance Allowed in Certain Cases.—When the owner fails to perform his part of the contract, and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed, in proportion to the price stipulated for the whole, and the Court shall adjust his claim accordingly. (*Ibid*, Sec. 26.)

Sale of Premises if Lien be Established.—If the lien is established in favor of any of the creditors whose claims are presented, the Court shall order a sale of the property to be made by any officer authorized to serve civil process between the same parties. (*Ib.*, Sec. 27.)

Part may be Sold if Sufficient.—If part of the property can be separated from the residue and sold, without damage to the whole, and if the value thereof is sufficient to satisfy all debts proved in the case, the Court may order a sale of that part, if it appears to be most for the interest of all parties concerned. (*Ibid*, S, 28.)

Notice of Sale.—The officer who makes the sale shall give notice of the time and place, in the manner prescribed, in relation to the sale on execution of a right of redeeming mortgaged lands, unless the Court orders a different notice to be given. (*Ibid*, Sec. 29.)

Right of Redemption.—Any interest in real estate so sold, may be redeemed in the manner provided in the case of a sale on execution, of the right of redeeming mortgaged lands. (*Ibid*, S. 30.)

Distribution of Proceeds of Sale.—If all the claims against the property covered by the lien are ascertained at the time of ordering the sale, the Court may order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors, to the amount of their respective debts, if there is sufficient therefor; and if there is not sufficient, then to divide and distribute the same among the creditors in proportion to the amount due to each of them. (*Ibid*, Sec. 31.)

Proceeds may be Brought into Court and Successive Distributions made.—If all the claims are not ascertained when the sale is ordered, or if for any other reason, the Court finds it necessary or proper to postpone the order of distribution, it may direct the officer to bring the proceeds of the sale into Court, there to be disposed according to the decree of the Court; and if, by reason of the claims of attaching creditors, or for any other cause, the whole cannot be distributed at once, the Court may make two or more successive orders of distribution, as the circumstances may require. (*Ibid*, S. 32.)

Disposition of Surplus.—If there is any surplus of the proceeds of the sale, after making all the payments above mentioned, it shall be forthwith paid over to the owner of the property, but such surplus, before it is so paid over, shall be liable to be attached or taken in execution in like manner as if it proceeded from a sale made by the officer on an execution. (*Ib.*, S. 33.)

Prior Attaching Creditors Preferred; Proportion of Proceeds to be Held—If the interest of the owner in the building, structure or land is under attachment at the time of filing and recording the statement of the account, the attaching creditor shall be preferred to the extent of the value of the buildings and land as they were when the statement was recorded; and the Court shall ascertain, by a jury or otherwise, as the case may require, what proportion of the proceeds of the sale shall be held subject to the attachment, as derived from the value of the property when the statement was recorded. (*Ib.*, S. 34.)

Such Proportion may be Applied to Satisfy the Execution.—If the attaching creditor recovers judgment, he shall be entitled to receive on his execution the proportion of the proceeds held subject to his attachment, or as much thereof as may be necessary to satisfy his execution, and the residue of the proceeds shall be applied in the same manner as if there had been no such attachment. (*Ibid*, Sec. 35.)

Subsequent Attachments to be Satisfied after Lien.—If the interest of the owner of the property is attached after the recording of the statement, the proceeds, after discharging all prior liens and claims, shall be applied to satisfy the execution of such attaching creditor. (*Ib.*, S. 36.)

Attachment Intervening Between Two Liens.—If an attachment is made after the recording of such statement, and if, after the attachment, another like statement is recorded, the creditor in the latter statement shall be entitled to be paid only out of the residue of the proceeds remaining, after paying all that is due on the demands, a statement of which is recorded before the attachment, and satisfy the attaching creditor. (*Ibid*, S. 37.)

Rights of Attaching Creditors as Between Themselves.—When there are several attaching creditors, they shall, as between themselves, be entitled to be paid according to the order of their attachments; but when several creditors, who are entitled to the lien provided for in this Chapter, have equal rights, as between themselves, and the fund is insufficient to pay the whole, they shall share it equally, in proportion to their respective debts. (*Ibid*, S. 38.)

If Debtor's Estate be Less than Fee Simple, Lien to Bind his Interest.—If the person for whom the work is done, or materials furnished, has an estate for life, or any other estate less than a fee simple in the land, or if the property, at the time of recording the statement, is mortgaged, or under any other incumbrance, the lien before provided for shall bind his whole estate and interest thereon in like manner as a mortgage would have done, and the creditor may cause the right of redemption, or whatever other right or estate the owner had in the property, to be sold and applied to the discharge of his debt, according to the provisions of this Chapter. ((*Ibid*, S. 39.)

Lien may be Enforced against Heirs or Assigns.—If the person indebted dies or conveys away his estate or interest before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs or whoever holds the estate or interest which he had in the premises at the time the labor or materials were performed or furnished; or, if a suit is commenced in his lifetime, it may be prosecuted against his executors, administrators, heirs or assigns in like manner as if the estate or interest had been mortgaged to secure the debt. (*Ib.*, S. 40.)

Executor, &c., May Enforce Creditor's Lien.—If the creditor dies before the commencement of the suit, the suit may be commenced and prosecuted by his executors and administrators; or, if commenced in his lifetime, it may be prosecuted by them as it might have been by the deceased, if living. (*Ibid*, S. 41.)

Suits Begun by one Creditor may be Prosecuted by Another.—If it appears, in any stage of the proceedings, that the suit was commenced by the petitioning creditor before his right of action accrued, or after it was barred, or if he become non-suit, or fails to establish his claims, suit may be prosecuted by any other creditor having such lien, in the same manner as if it had been originally commenced by him, if the circumstances of the case are such that he might then, or at any time after the

commencement of the original suit, have commenced a like suit on his own claim. (*Ib.*, S. 42.)

If Suit be Begun Before Right of Action Accrues, Another Creditor May Prosecute Costs.—If the suit is commenced by the petitioning creditor before his right of action accrues, his claim may, nevertheless, be allowed, if the suit is carried on by any other creditor, as provided in the preceding section; but shall not, in any case, be entitled to costs; and he may be required to pay the costs incurred by the debtor, or such part thereof as the Court may deem reasonable. (*Ibid*, S. 43.)

Costs in Other Respects.—The costs, in all other respects, shall be subject to the discretion of the Court, and shall be paid from the proceeds of the sale, or by any of the parties to the suit, as justice and equity require. *Ibid.*, S. 44.)

Civil Action not Barred,—Nothing contained in this Chapter shall be construed to prevent a creditor in such contract from maintaining an action thereon in like manner as if he had no such lien for the security of his debt. (*Ibid.*, S. 45.)

Discharge of a Lien; how Executed.—When a debt secured by such lien is fully paid, the creditor, at the expense of the debtor, shall enter on the margin of the register, where the statement is recorded, a discharge of his lien, or shall execute a release thereof, which may be recorded where the statement is recorded. (*Ibid.*, S. 46.)

4TH.—FORMS.

FORM NO. 153.—PETITION BY CONTRACTOR, FOR BUILDING MATERIALS.

THE STATE OF SOUTH CAROLINA, } *Court of Trial Justice.*
COUNTY OF ———. }

C. D.
vs.
E. F.

To the Court of Trial Justice, A. B., a Trial Justice in and for the said County of the said State;

The petition of C. D., the plaintiff herein, shows:

I. That on the —— day of —— 18——, at ——, this plaintiff, by virtue of a contract with the defendant, sold and delivered to the defendant certain building materials, consisting of ———, of the value of ——— dollars; the quantity and value of which is set forth in the bill of particulars herein.

II. That by the terms of said contract and sale, the said sum became due on the ——— day of ——— 18——, but the defendant has not paid the same.

III. That the said materials were used in erecting a building and appurtenances, upon the following described premises, to wit: (*describe premises*)

IV. That the said premises were, at the time of making said contract of sale, and until the filing of the notice of lien hereinafter mentioned, the property of the defendant

V. That on the ——— day of ——— 18——, and after performance of said contract, the plaintiff duly filed in the office of the Clerk of Court for ——— County, a notice of lien claimed upon said premises for the indebtedness aforesaid; which notice was duly verified, and specified the amount of the claim as above stated, and specified the defendant as the person against whom the claim was made, and as owner of the said premises, which were therein described.

Wherefore the plaintiff prays judgment, directing a sale of the interest of the defendant, in the premises, building, and appurtenances above described, to the extent of the right of the defendant on the ——— day of ———, 18 ——, (*date of filing notice of lien,*) and directing that the proceeds of such sale be applied to the payment of the costs of these proceedings, and to the payment of this plaintiff's claim aforesaid; and that if the proceeds of such sale shall not be sufficient to discharge the costs and claim aforesaid, this plaintiff shall have leave to docket a transcript of judgment against the defendant for such sum as may remain due.

(*Date.*) (*Signature of Plaintiff or his Attorney.*)

FORM NO. 154.—PETITION OF SUB-CONTRACTOR, AGAINST OWNER AND CONTRACTOR FOR LABOR.

(*Caption, &c., as in Preceding Form.*)

The petition of G. H., the plaintiff herein, shows:

I. That on the day of ——— 18——, the defendant, C. D., (*Contractor,*) entered into a contract with the defendant, E. F., (*owner,*) for the erection of a building and appurtenances upon the premises hereinafter described; by terms of which contract it was agreed that (*state substance of terms of contract; or say,* which contract was as follows, to wit; *and give copy.*)

II. (*State performance of contract by contractor so far as to show indebtedness of owner to contractor, and aver such indebtedness, specifying its amount.*)

III. That between the —— day of ———, 18—, and the —— day of ———, 18—, the plaintiff, in pursuance of an agreement theretofore entered into by him with the defendant, C D, (Contractor,) and in conformity with the terms of the contract above mentioned, performed (*here state kind of labor performed*), to the value of —— dollars, the nature, amount and value of which labor are set forth in the bill of particulars herein.

IV. That by the terms of the agreement between the plaintiff and the

defendant, C D, (Contractor,) said sum became due on the —— day of ———, 18—, but he has not paid the same.

V. That said labor was performed in erecting a building and appurtenances upon the following described premises. (*describe premises*):

VI. That the said premises were, at the time when said labor was performed, and until the filing of the notice of lien hereinafter mentioned, the property of the defendant, E F, (owner.)

VII. That on the —— day of ———, 18—, the plaintiff duly filed with the Clerk of Court of ——— County, a notice of lien claimed upon said premises for the indebtedness aforesaid, which notice was duly verified, and specified the amount of the claim as above stated, and specified the defendant, E F, (owner,) as the person against whom the claim was made, and as the owner of said premises, which were therein described by (*state how*).

Wherefore the plaintiff prays judgment, directing a sale of the interest of the defendant, E F, (owner,) in the premises, building and appurtenances above described, to the extent of the right of the said defendant on the —— day of ———, 18—, (*date of filing notice of lien,*) and directing that the proceeds of such sale be applied to the payment of the costs of these proceedings, and to the payment of the plaintiff's claim aforesaid; and prays judgment, in addition, against the defendant, C D, (Contractor,) for the sum of ——— dollars, (*the amount of the plaintiff's claim,*) with interest from the —— day of ———, 18—, together with the costs of these proceedings.

(*Signature of Plaintiff, or his Attorney.*)

(*Date.*)

FORM OF SUMMONS.

(*As in ordinary civil actions. See Courts of Trial Justices.*)

LIMITATION.

1st. *Criminal Actions.*—There is no time in which a criminal action may be limited, the maxim of the common law being: "*Nullum tempus occurrit regi.*"

2d. The time for commencing civil actions other than for the recovery of real property, shall be as follows:

Within twenty years:

1. An action upon a judgment or decree of any Court of the United States, or of any State or Territory within the United States. (Code, Sec. 113.)

2 An action upon a sealed instrument, other than sealed notes and personal bonds, for the payment of money only, whereof the period of limitation shall be the same as prescribed in the following Section, to wit, six years. (15 Stat., 869.)

Within six years:

1. An action upon a contract, obligation or liability, expressed or implied.

2. An action upon a liability created by Statute, other than a penalty or forfeiture.

3. An action for purchase upon real property.

4. An action for taking, detaining or injuring any goods or chattels, including action for the specific recovery of personal property. (*Ibid*, Sec. 114.)

Within three years:

An action upon a Statute, for a penalty or forfeiture, where the action is given to the party agrieved, or to such party and the State, except where the Statute imposing it prescribes a different limitation. (*Ibid*, Sec. 115.)

Within two years:

An action upon a Statute, for a forfeiture or penalty to the State. (*Ibid*, Sec. 116.)

Upon a Current Account.—In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account of either side. (*Ibid*, Sec. 118.)

For Penalty, etc.—An action upon a Statute, for a penalty or forfeiture given, in whole or in part, to any person who will prosecute for the same, must be commenced within one year after the commission of the offense; and, if the action be not commenced within the year by a private party, it may be commenced within two years thereafter, in behalf of the State, by the Attorney General or the Solicitor of the Circuit where the offense was committed. (*Ibid*, Sec. 119.)

Defendant out of State.—If when a cause of action shall accrue against any person, he shall be out of the State, such action may be commenced within the terms herein respectively limited, after the return of such person into this State; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this State, or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action. (*Ibid*, Sec. 123.)

Exception as to Persons Under Disabilities.—If a person entitled to bring an action mentioned above, except for a penalty or forfeiture, or

against a Sheriff or other officer for an escape, be, at the time the cause of action accrued, either—

1. Within the age of twenty-one years; or,

2. Insane; or,

3. Imprisoned on a criminal charge, or in execution under a sentence of a Criminal Court for a term less than his natural life.

The time of such disability is not a part of the time limited for the commencement of the action; except that the period within which the action must be brought cannot be extended more than five years by any such disability, except infancy; nor can it be so extended, in any case, longer than one year after the disability ceases. (*Ibid*, Sec. 124.)

Death of Persons Entitled Before Limitation Expires.—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his executors or administrators after the expiration of that time, and within one year after the issuing of letters testamentary or of administration. (*Ibid*, Sec. 125.)

Action by Aliens.—When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be part of the period limited for the commencement of the action. (*Ibid*, Sec. 126.)

The Statute of Limitations, having once commenced to run, is not suspended by the defendant's going out of the State. (Richardson *vs.* Whitfield, 2 McCord, 148.)

When Judgment Reversed.—If an action shall be commenced within the time prescribed therefor, and a judgment therein be reversed on appeal, the plaintiff, or if he die, and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal. (Code, Sec. 127.)

Time of Stay by Injunction, Etc.—When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action. (*Ibid*, S. 128.)

Disability not Available.—No person shall avail himself of a disability unless it existed when his right of action accrued.—(*Ibid*, S. 129.)

When two or more disabilities shall co-exist at the time the right of action accrued, the limitation shall not attach until they all be removed. (*Ibid*, S. 130.)

The above provisions shall not affect actions to enforce the payment of bills, notes or other evidences of debt issued by moneyed corporations or issues or put in circulation as money. (*Iqid*, S. 131.)

Acknowledgment or New Promise must be made in Writing.—No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of the above provisions, unless the same be contained in some writing signed by the party to be charged thereby ; but this section shall not alter the effect of any payment of principal or interest. (*Ibid*, S. 133.)

LORD'S DAY.

(*See Sunday.*)

LOTTERIES.

Penalty for Setting Up Lotteries.—Whoever shall publicly or privately erect, set up or expose to be played, drawn or thrown at, any lottery, under the denomination of sales of houses, lands, plate, jewels, goods, wares, merchandises, or other things whatsoever, or for money, or by any undertaking whatsoever in the nature of a lottery, by way of chances, either by dice, lots, cards, balls, numbers, figures or tickets, or who shall make, write, print or publish, or cause to be made, written or published any scheme or proposal for any of the purposes aforesaid, and shall be convicted of any of the offenses aforesaid, on any indictment for the same, at the Court of General Sessions, shall forfeit the sum of one thousand dollars, one-third thereof to and for the use of the State, one-third part thereof to the informer, and the other third part thereof to the poor of the County where the offense shall be committed, and shall also for every such offense be committed by the said Court to the common jail for the space of twelve months. (Gen. Stat. c. CXXXV., S. 1, p. 737–8.)

Penalty for Adventuring In.—Whoever shall be adventurer in, or shall pay any moneys or other consideration, or shall any way contribute unto, or upon account of any such sales or lotteries, shall forfeit for every such offense the sum of one hundred dollars, to be recovered with costs of suit, by action or indictment, in any Court of competent jurisdiction in this State, one moiety thereof to and for the use of this State, and the other moiety thereof to the person or persons who shall inform and sue for the same. (*Ibid*, S. 2, p. 738.)

Selling Lottery Tickets.—It shall be unlawful to offer for sale any lottery tickets or to open or keep any office for the sale of lottery tickets and if any person shall offend against any of the provisions of this section, he shall, on conviction thereof, forfeit and pay to the State a sum not exceeding ten thousand dollars, and it shall be the duty of the County Treasurer of the County to prosecute the offender.—(*Ibid*, Sec. 3.)

LUNATICS.

1st.—Not be Confined in Jail.
2d.—Who May be Admitted to Asylum and Terms of Admission.
3d.—Punishment for Assaulting.
4th.—Duties of Trial Justices in Regard to.
5th.—Of County Commissioners in Regard to Pauper Lunatics.
6th.—Forms.

1st.—NOT TO BE CONFINED IN JAIL.

It shall be the duty of the Jailors of the several Counties of this State at the setting of each Court of Sessions, to report to the presiding Judge the names of persons confined in Jail who are lunatics, idiots, or epileptics, with the cause of their detention. (Gen. Stat c. CXLIV., S. 10, p. 759.)

No pauper, idiot or epileptic shall hereafter be confined for safe keeping in any jail; and if any such person shall be imprisoned, under and by virtue of any legal process, it shall be the duty of the Sheriff, in whose custody he may be, to obtain his discharge as speedily as possible, and send him forthwith to the Asylum, according to law, at the expense of the County within whose limits he shall have gained a settlement. (*Ibid*, Sec. 8.)

2d.—WHO MAY BE ADMITTED TO ASYLUM, AND TERMS OF ADMISSION.

It shall be the duty of the Regency to admit as subjects of the institution all idiots, lunatics and epilepties, being citizens of this State, according to the following regulations and subject to the following conditions, that is to say:

1. All persons who shall be found idiots or lunatics, by inquisition from the Probate or Circuit Courts, or on trial in the Circuit where the Court shall order such admission

2. Where it shall be requested under the hand of the husband or wife, or (*where there is no husband or wife*) of the next of kin of the idiot or lunatic.

3. All persons who shall be declared lunatics, idiots or epileptics, after due examination by one Trial Justice and two licensed practicing physicians of the State. Where the subject is a pauper, the admission shall be at the request of the County Commissioners of the County wherein such pauper has a legal settlement, otherwise, the admission shall be at the request of the husband or wife, or, where there is no husband or wife, of the next of kin of the idiot, lunatic or epileptic. (*Ibid*, C. LXIX, Sec. 3, p. 379.)

All idiots and lunatics from any of our sister States shall be admitted on such evidence of their lunacy or idiocy as the Regents regard sufficient; but no foreign lunatic or idiot shall be admitted or kept in the institution to the exclusion of subjects being citizens of this State, and they shall pay the same rates as citizen subjects. (*Ibid*, Sec. 4.) 3041

No lunatic, idiot or epileptic, who may be declared a fit subject for the institution by a Trial Justice and two physicians, or who shall be sent from a sister State, shall be retained in the institution more than ten days after his admission, except where there shall be entered in the record of the institution an order for his retention, made after full examination of his state of mind by the medical attendant or attendants, and not less than three of the Regents; and upon such order being made, it shall be the duty of the Secretary of the Rgency to make out a certified copy of the declaration of the Trial Justice and physicians, and of the order of retention, and immediately send the same to the Judge of Probate of the County wherein such lunatic, idiot or epileptic shall reside, who shall thereupon make such order in relation to the custody of the estate of the said subject as would have been made had the proceedings been under a writ *de lunatico inquirendo*. (*Ibid*, Sec. 8.) 3050 3042

Transient paupers lunatics, idiots or epileptics sent to the Asylum by virtue of the existing laws, shall be supported at the expense of the State, and the Regents are hereby authorized to draw from the Treasury for every such lunatic one hundred and thirty-five dollars per annum. And it shall be the duty of the Regents to report, specially, to every Legislature the whole number of this class of lunatics, idiots or epileptics which thus remain a charge upon the public Treasury. (*Ibid*, S. 9.)

No subject shall be admitted into the institution until one half year's expense of maintenance and medical attendance there shall be paid to the Treasurer of the Regency; and a bond and good security shall be given to pay said expenses half yearly, in advance, so long as the subject remains in the institution, and to pay all funeral charges in case of his death; but such bond shall not be required of the County Commissioners sending a pauper subject to the institution: *Provided*, That the Regents shall not be required to exact half yearly advances for the admission into the Asylum of such subject as may be deemed curable, and likely to be speedily discharged, but only such advances as they may deem the nature of the case to require. In case the half yearly advances are not paid, the bond shall be immediately put in suit, and no imparlance thereto shall be allowed. (*Ibid*, S. 10.)

Any Judge of the Circuit Court is authorized to send to the Lunatic Asylum every person charged with the commission of any criminal offense, and who shall, upon the trial before him, prove to be *non compos mentis;* and the Judge is authorized to make all necessary orders to carry into effect this power. When the person so sent is not a pauper, he shall be supported out of his own estate, according to regulations to be prescribed by the Court, as on a return to a writ *de lunatico inquirendo*. (*Ibid*, S. 6.) 3048

The Judge of the Probate Court may commit to the Lunatic Asylum any idiot, lunatic or person *non compos mentis*, who, in his opinion, is so furiously mad as to render it manifestly dangerous to the peace and safety of the community that he or she should be at large; and also in all such other cases provided by law. In all cases the Judge shall certify in what place the said person resided at the time of the commitment, and such certificate shall be conclusive evidence of such residence. (*Ibid*, S. 7.)

3D.—PUNISHMENT FOR ASSAULTING.

It shall be the duty of the Regents to remove from office, and cause to be indicted, any person employed in the said institution who shall assault any idiot, lunatic or epileptic, or use towards any such idiot, lunatic or epileptic any other or greater violence than may be necessary for his or her restraint, government or cure. (*Ibid*, S. 12.)

4TH.—DUTIES OF TRIAL JUSTICES IN REGARD TO.

Whenever a Judge of Probate, or Judge of the Circuit Court, shall direct an order to any Trial Justice, to inquire as to the idiocy, lunacy or epilepsy of any person, or when information, on oath, shall be given to any Trial Justice, that a person is an idiot, lunatic or epileptic, and is chargeable for his support on the County, it shall be the duty of such Trial Justice forthwith to call to his assistance two licensed practicing physicians, and examine such person, and the evidence of his or her idiocy, lunacy or epliepsy; and if, after full examination, they shall find such person an idiot, lunatic or epileptic, they shall certify to the said Judge, or to the Board of County Commissioners, whether, in their opinion, such person is curable or incurable, and whether his enlargement would be harmless or dangerous or annoying to the community; and thereupon the Judge or the Board of County Commissioners, in his or its discretion, may make an order that the said person shall be sent to the Lunatic Asylum. (*Ibid*, See. 5.)

5TH—DUTY OF COUNTY COMMISSIONERS IN REGARD TO PAUPER LUNATICS.

The County Commissioners are authorized to send all pauper lunatics, idiots and epileptics in their several Counties to the Lunatic Asylum. (*Ibid*, C. XXIX, Sec. 23, p. 222.)

6TH.—FORMS.

FORM No. 155.—AFFIDAVIT TO PROCURE THE EXAMINATION OF AN INSANE PERSON.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.

The undersigned, residing in said County, makes oath that he believes E F to be an insane person, and a fit subject for admission into the In-

sane Asylum; that his (or her) being at large is injurious to ———, and disadvantageous, if not positively dangerous, to the community, and ought, therefore, to be confined in the Lunatic Asylum.

C. D.

Sworn to before me this ——— day of ——— A. D 18——.

A. B.,

Trial Justice.

FORM No. 156.—ORDER OF CIRCUIT JUDGE, PROBATE JUDGE, OR BOARD OF COUNTY COMMISSIONERS.

THE STATE OF SOUTH CAROLINA }
COUNTY OF ——— }

To A. B., Trial Justice:

SIR: It being reported to me by C. D. that E. F. is a lunatic, and a proper subject for admission into the Insane Asylum, you will cause the said E. F. to be examined as to the alleged lunacy by two licensed practicing physicians, and report the result of said examination to this (Court or Board, as the case may be.)

(*Signature of Court or Board.*)

(*Date*)

FORM No. 157.—ORDER OF TRIAL JUSTICE.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF———. }

To M. F., M. D.:
Ta O. P., M. D,:

GENTLEMEN: It being alleged that E. F. is insane, and a proper subject for admission into the Lunatic Asylum, you are hereby commanded to examine, without delay, the said E. F., as to his (or her) alleged insanity, and report the result of said examination to me.

A. B.,

Trial Justice.

(*Date.*)

FORM No. 158.—PHYSICIANS' REPORT.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ——— }

We, the undersigned, physicians, hereby certify that we have this day visited and personally examined E. F., of the County of ———, State of South Carolina, and find that the said E. F. is a (*state whether lunatic or epileptic,*) and, in our opinion, a proper person to be confined in an Asy-

lum for care and treatment, and we have formed this opinion from the following facts. (*Here follow the statement of facts.*)

(*Signatures of Physicians.*)

(*Date.*)

CERTIFICATE.

THE STATE OF SOUTH CAROLINA, }
COUNTY OF ———. }

I, A. B., Trial Justice in and for the County and State aforesaid, do hereby certify that the above examination was made, and that the medical men making said examination are licensed practicing physicians in good standing.

A. B.,
Trial Justice.

(*Date.*)

NOTE.—The commitment to the Asylum can only be issued by the Circuit Judge, Judge of Probate, or the Board of County Commissioners, as the case may be. No one else can send a patient to the Asylum.

MAID.

(*See Abduction.*)

MAIM OR MAYHEM.

Maim, at common law, is a bodily hurt, whereby a man is rendered less able in fighting to defend himself or to annoy his adversary.

Therefore, the cutting off, or disabling or weakening a man's hand or finger, or striking out his eye or foretooth, or depriving him of those parts, the loss of which, in all animals, abates their courage, are held to be maims; but the cutting off his ear or nose, or the like, are not held to be maims at common law, because they do not weaken a man, but only disfigure him. In order to found an indictment of mayhem, the act must be maliciously, though it matters not how sudden the occasion. (1st Russell, 586.)

It should seem that there can be no accessories before the fact in mayhem, at common law; though there appears to have been some difference of opinion, or rather misapprehension upon the subject. For, supposing the offense, to be in the nature of an aggravated trespass only, the rule will apply, that in crimes under the degree of felony there can be no accessories, but that all persons concerned, if guilty at all, are

principals. It does not appear to have been anywhere supposed, that there can be no accessories after the fact in mayhem. (1st Russell, 586.)

Mayhem or the maiming of persons, was probably at one time an offense at common law, of the degree of felony; as the judgment was, *membrum pro membro*. But this judgment afterwards went out of use, partly because the law of retaliation is at best an inadequate rule of punishment, and partly because, upon the repetition of the offense, the punishment could not be repeated. The offense, therefore, appears to have been considered, in later times, as in the nature of an aggravated trespass; and the only judgment which now remains for it at common law, is fine and imprisonment. It is however, a misdemeanor of the highest kind, and spoken of by Lord Coke, as the greatest offense under felony. (*Ibid.*, 585.)

MALEFACTORS.

Every master or person having charge of any ship or other vessel who shall bring into this State any convicted malefactor or person ordered for transportation, for any crime or offense whatever, from any foreign Country, State or Dominion, the ship or vessel bringing such person, shall be obliged to leave the port in which she shall arrive, within ten days after arrival, and shall not be permitted to take or receive on board any lading whatsoever, on pain of forfeiture of such ship or vessel; and if any master shall land, or suffer to be landed, or dispose of the time or service of such person, for the payment of his passage, or any other claim or demand, such master of vessel or other person having the charge thereof, shall forfeit and pay for every convicted malefactor or person ordered for transportation, which such master thall bring into this State, and offer to dispose of on indenture or other contract for service, the sum of twenty-five hundred dollars. (Gen. Stat., C. CXXXV., S. 5, p 738.)

The fines and forfeitures inflicted by the above Section shall and may be recovered by indictment, to which any person offending shall be compelled to give security to abide the issue of the suit; one-half of which forfeiture shall go to the prosecutor, who shall inform and sue for the same, and the other half for the benefit of the State. (*Ibid.*, S. 6.)

MALICIOUS MISCHIEF.

(*See Burning, Cattle, &c.*)

Malicious Injury to Trees, Houses, &c.—Whoever shall wilfully, unlawfully and maliciously cut, mutilate, deface, or otherwise injure, the trees, houses, out-houses, fences or fixtures of another, or commit any

other tresspass upon real property in the possesssion of another, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined and imprisoned at the discretion of the Judge before whom the case shall be tried. (Gen. Stat., C. CXXIX., S. 20, p. 718.)

Entry on Lands of another.—Every entry on the enclosed or unenclosed land of another, after notice from the owner or tenant prohibiting the same, shall be deemed a misdemeanor. (*Ibid.*, S. 26.)

Destroying, &c., Monuments, Signals. &c., Constructed by United States Coast Survey.—If any person shall wilfully and maliciously destroy, or in any manner hurt, damage or obstruct, or shall wilfully and maliciously cause. or aid, or asssist, or counsel, or advise, any other person or persons to destroy, or in any manner to hurt, damage, injure or obstruct any signal, monument, building, or appendage thereto, used or constructed under and by virtue of the Act of Congress of the United States, passed the 10th day of February, 1807, entitled: "An Act to provide for surveying the coasts of the United States," and the supplements thereto, he shall be liable to be indicted therefor, and, on conviction, shall be imprisoned not more than one month, or pay a fine not exceeding fifty dollars, or both, at the discretion of the Court before which such conviction shall take place, and shall further be liable to pay all expenses of repairing the same; and it shall not be competent for any person so offending to defend himself by pleading, or giving in evidence that he was the owner, or agent, or servant of the owner of the land where such damage was done or caused, at the time the same was caused or done. (*Ibid.*, Sec. 33.)

MANSLAUGHTER.

(*See Homicide*)

MARE.

(*See Horse.*)

MARKS OR BRANDS.

(*See Cattle.*)

MARRYING.—SECOND TIME UNLAWFULLY.

(*See Bigamy.*) (*See Intermarriage of Races.*)

MIDWIVES.

(*See Physician.*)

MILLS.

(*See Grain.*)

MISFORTUNE.—KILLING BY, NOT MURDER.

(*See Homicide.*)

MOTION.—IN COURTS OF TRIAL JUSTICES.

(*See Appeal, Arrest and Bail, Claim and Delivery of Personal Property, and New Trial.*)

NEGLIGENCE.

For oppression in office, whether by undue personal violence, cruelty, taking an amount of property in unreasonable proportion to the sum to be collected, or for any official misconduct, habitual negligence, habitual drunkenness or fraud, when established to the satisfaction of a jury, upon indictment, a constable shall be punished by imprisonment not exceeding one year, and a fine not exceeding one thousand dollars, at the discretion of the Court, besides being liable to an action by the party aggrieved; but if any such action for damages shall be instituted against a Constable, and the plaintiff fails, he shall be liable to be mulcted in double or treble costs, by order and at the discretion of the Presiding Judge. (Gen. Stat., C. XXVI., S. 7, p. 207.)

The office of the said Constable shall be vacant upon his conviction. (*Ib.*, S. 8)

If any public officer hereafter to be elected or appointed, whose authority is limited to a single election or judicial district, shall be guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud or oppression, he shall be liable to indictment, in which the privilege of traverse shall not be allowed; and upon conviction thereof, shall be fined not exceeding one thousand dollars, and imprisoned not exceeding one year ((*Ibid.*, C. CXXXI, S. 27, p. 729.)

NEW TRIAL.

(*See Appeal.*)

When New Trials may be Granted.—A Trial Justice may grant new trials in cases tried in his Court, for reason for which new trials are granted in other Courts of Law of the United States: *Provided, however*, the case tried shall only be heard and tried anew by the Trial Justice before whom the case shall first be tried. (16 Stat., 60.)

When may be Heard.—No motion for a new trial shall be heard, unless made within five days from the rendering of the judgment. (*Ibid*, Sec. 2.)

Appeals.—The right of appeal from the judgment shall exist for five days after the refusal of a motion for a new trial. (*Ibid*, Sec. 3.)

NOTES.

Given for Gambling Debts, void. (*See Gaming.*)

Proof of Signature to.—The absence of a witness to any bond or note, shall not be deemed a good cause by any Court of Justice, for postponing a trial respecting the same; but the signature to such bond or note may be proved by other testimony, unless the defendant, in his answer, shall swear or affirm, according to the form of his religious profession, that the signature of the bond or note in suit, is not his or hers. (See Bills and Notes.)

NUISANCE.

Properly signifies anything that worketh hurt, inconvenience or damage, and may be either public or private.

A private nuisance may be defined as anything done to the annoyance or hurt of another, or which hinders his enjoyment of his lands, tenements or hereditaments.

A public nuisance is an offense against the public, either by doing a thing to the hurt and annoyance of all citizens, or by neglecting to do a thing which the common good requires.

1st.—What shall be Deemed a Nuisance.
2d.—How Removed or Abated.
3d.—How Punishable.

1st.—WHAT SHALL BE DEEMED A NUISANCE.

Offensive trades and manufactures may be public nuisances. A brewhouse, erected in such an inconvenient place, that the business cannot be carried on without greatly incommoding the neighborhood, may be

indicted as a common nuisance; and so in like case may a glass-house or swine-yard. With respect to a candle manufactory, it has been holden that it is no common nuisance to make candles in a town, because the needfulness of them shall dispense with the noisomeness of the smell; but the reasonableness of this opinion seems justly to be questionable, because, whatever necessity there may be that candles be made, it cannot be pretended that it is necessary to make them in a town. (1st Russ., 296.)

It seems that erecting gunpowder mills, or keeping gunpowder magazines near a town, is a nuisance by the common law, for which an indictment or information will lie. (*Ibid*, 297.)

All disorderly inns or ale-houses, bawdy-houses, gaming-houses, playhouses, unlicensed or improperly conducted booths and stages for rope-dancers, mountebanks and the like, are public nuisances, and may therefore be indicted. It seems to be agreed, that the keepers of an inn may, by the common law, be indicted and fined as being guilty of a public nuisance, if he usually harbor thieves or persons of scandalous reputation, or suffer frequent disorders in his house, or take exhorbitant prices, or set up a new inn in a place where there is no manner of need of one, to the hinderance of other ancient and well governed inns, or keep it in a place in respect of its situation, wholly unfit for such a purpose. And it seems to be clear, that if one who keeps a common inn, refuse either to receive a traveler as a guest into the house, or to find him vituals or lodging, upon his tendering him a reasonable price for the same, he is not only liable to render damages to the party in an action, but also may be indicted and fined at the suit of the King; and it is also said that he may be compelled by the constable of the town, to receive and entertain such a person as his guest; and that it is in no way material whether he have any sign before his door or not, if he make it his common business to entertain passengers. (*Ibid*, 298.)

It is clearly agreed that keeping a bawdy-house is a common nuisance, as it endangers the public peace, by drawing together dissolute and debauched persons; and also has an apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness. And it has been adjudged that this is an offense of which a *feme covert* may be guilty as well as if she were *sole*, and that she, together with her husband, may be convicted of it; for the keeping of the house does not necessarily import property, but may signify that share of government which the wife has in a family as well as the husband; and in this she is presumed to have a considerable part, as those matters are usually managed by the intrigues of her sex. If a person be only a lodger, and have but a single room, yet, if she make use of it to accommodate people in the way of a bawdy-house, it will be the keeping of a bawdy-house as much as if she had a whole house. But an indictment cannot be maintained against a person for being a common bawd, and procuring men and women to meet together to commit fornication; the indict-

ment should be for keeping a bawdy-house. For the bare solicitation of chastity is not indictable, but cognizable only in the ecclesiastical Courts. (*Ibid*, 299.)

It is clearly agreed, that all common gaming-houses are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices, and incite to idleness and avaricious ways of gaining property, great numbers whose time might otherwise be employed for the good of the community. And in a late case it was held, that the keeping of a common gaming-house, and for lucre and gain, unlawfully causing and procuring divers idle and evil disposed persons to frequent, and come to play together at a game called *rouge et noir*, and permitting the said idle and evil disposed persons to remain playing at the same game for divers large and excessive sums of money, is an indictable offense at common law. It has also been adjudged, that it is an offense for which a *feme covert* may be indicted; for, as she may be concerned in acts of bawdry, as has been observed above, so she may be active in promoting gaming and furnishing the guests with conveniences for that purpose. There are also certain penalties imposed by Statutes upon the offense of keeping a common gaming-house. (*Ibid.*)

A common scold, *communis Rixatrix*, (for our law confines it to the feminine gender,) is a public nuisance to her neighborhood, and may be indicted for the offense, and upon conviction, punished by being placed in a certain engine of correction called the trebucket, or ducking stool. (*Ibid*, 303.)

A defendant was convicted on an indictment for making great noises in the night, with a speaking trumpet, to the disturbance of the neighborhood which the Court held to be a nuisance. The exposing in public places, persons infected with contagious disorders, so that the infection may be communicated, is a nuisance. (*Ibid.*)

It is said that a mastiff going in the street unmuzzled, from the ferocity of his nature, being dangerous and cause of terror to the citizens, seems to be a common nuisance, and that consequently the owner may be indicted for suffering him to go at large. (*Ibid.*)

There is no doubt but that all injuries whatsoever to a highway, as by digging a ditch, or making a hedge across it, or laying logs of timber in it, or by doing any other act which will render it less commodious to citizens, are public nuisances at common law. And it is clearly a nuisance at common law, to erect a new gate in a highway, though it be not locked, and opened and shut freely; because it interrupts the people in that free and open passage which they before enjoyed and were lawfully entitled to; but where such a gate has continued time out of mind, it shall be intended that it was set up at first by consent, on a composition with the owner of the land on the laying out of the road, in which case the people had never any right to a freer passage than what they continue to enjoy. (*Ibid*, 317.)

Whoever shall obstruct or cause to be obstructed, any ditch or drain

on the side of any road which has been or may hereafter be constructed under the authority and at the expense of the State, or any ditch or drain made as aforesaid, to drain the water from any part of the said roads, or any of them, by throwing into the said ditches or drains, any earth, logs, trees, bushes or other things whatsoever, and shall not immediately remove the same when required, shall be deemed guilty of a nuisance, and, on conviction thereof, shall be fined in a sum not exceeding ten dollars, nor less than two dollars, and shall be further liable for the expense of removing the nuisance. (Gen. Stat. C. CXXIX, Sec. 30, p. 720.)

It is a common nuisance to divert part of a public navigable river, whereby the current of it is weakened and made unable to carry vessels of the same burthen as it could before. And the laying of timber in a public river, is as much a nuisance, whether the soil belongs to the party, as if it were not his, if thereby the passage of vessels is obstructed. The placing of a floating dock in a public river, has also been held to be a nuisance, though beneficial in repairing ships. (1st Russell, 340; Gen. Stat, C. XLIV, Sec. 1, p. 264; *Ibid*, C. XLVI, Sec. 9, p 276.)

It will be no excuse for the defendant, that the nuisance for which he is indicted, has been in existence for a great length of time; as, however, twenty years acquiescence may bind parties, whose private rights only are affected, yet the public have an interest in the suppression of public nuisances, though of longer standing. It has been held, that a party could not defend putting his woodstack in the street before his house, on the ground that it was according to the ancient usages of the town, leaving sufficient room for passengers, for it is against law to prescribe for a nuisance. And Lord Ellenborough, C. J., said in a late case, "It is immaterial how long the practice may have prevailed, for no length of time will legitimate a nuisance. The still fishery across the river at Carlisle, had been established for a vast number of years. But Mr. Justice Butler held, that it continued unlawful, and gave judgment that it should be abated." But in some cases, length of time may concur with other circumstances, in preventing an obstruction from having the character of a nuisance; as where, upon an indictment for obstructing a highway, by depositing bags of clothes there, it appeared that the place had been used for a market for the sale of clothes, for over twenty years, and that defendant put the bags there for the purpose of sale. Lord Ellenborough, C. J., said: "That after twenty years acquiesence, and it appearing to all the world that there was a fair or market kept at the place, he could not hold a man to be a criminal, who came there under the belief that it was such fair or market, legally instituted." (1st Russell, 305.)

2D.—REMOVAL OR ABATEMENT.

It is laid down in the books, that any one may pull down or otherwise destroy a common nuisance; and it is said that if any one whose estate is, or may be, prejudiced by a private nuisance, may justify the

entering into another's grounds and pulling down and destroying such nuisance, surely it cannot but follow *a fortiori*, that any one may lawfully destroy a common nuisance. And it is also said, that it seems that in a plea justifying the removal of a nuisance, the party need not show that he did as little damage as might be; but this may perhaps be doubted, as even where there is a judgment to abate a nuisance, it is only to abate so much of the thing as makes it a nuisance. (*Ibid*, 304.)

3D.—HOW PUNISHED.

All common nuisances are regularly punishable by fine and imprisonment; but as the removal of the nuisance is the chief end of the indictment, the Court will adopt the judgment to the nature of the case. Where the nuisance, therefore, is stated in the indictment to be continuing, and does, in fact, exist at the time of the judgment, the defendant may be commanded by the judgment, to remove it at his own costs; but only so much of the thing as causes the nuisance, ought to be removed, as if a house be built too high, only so much of it as is too high should be pulled down; and if the indictment were for keeping a dye-house, or carrying on any other stinking trade, the judgment would not be to pull down the building where the trade was carried on. So in the case of a glass-house, the judgment was to abate the nuisance, not by pulling the house down, but only by preventing the defendant from using it again as a glass-house. But where the indictment does not state the nuisance to be continuing, a judgment to abate it would not be proper. In cases where the point arose, Lord Kenyon, C. J., said: "When a defendant is indicted for an existing nuisance, it is usual to state the nuisance and its continuance down to the time of taking the inquisition; it was so stated in Rex *vs.* Pappeneau, *et adhuc existet;* and in such cases the judgment should be that the nuisance be abated. But in this case it does not appear in the indictment, that the nuisance was then in existence, and it would be absurd to give judgment to abate a supposed nuisance which does not exist. If, however, the nuisance still continue, the defendant may again be indicted for continuing it." (*Ibid*, 306.)

If a man is annoyed by a private nuisance, he shall have his action upon the case and recover his damages; but, if it is a public nuisance, he shall not have an action upon the case; the law having made this provision to prevent a multiplicity of suits, for if any one might have an action, all men might have the like; but the law for this common nuisance has provided an apt remedy, by presentment or indictment at the suit of the King, in behalf of all his subjects; unless any man has a particular damage, as if he and his horse fall into a ditch made across the highway, whereby he received hurt and loss; therefore his special damage which is not common as others, he shall have an action upon the case. (2d Burns' Justice, 186.)

In general, the remedy for a nuisance in a highway, is by indictment, but if by such nuisance a party suffer a particular damage, an action lies; but the damage must be direct and not consequential. (Carey *vs.* Brooks, 1st Hill, 365.)

OBSTRUCTING OFFICER.

(*See Resisting Officer.*)

OBSTRUCTING RAILROADS.

A felony.—If any person or persons shall wilfully and maliciously place, or cause to be placed, on the track or other part of the passage-way of any railroads, on which steam engines or hand cars are used, any timber, stone or other obstruction, with intent to injure or impede the passage of any cars or means of conveyance, such person or persons shall be deemed guilty of felony, and, on being thereof convicted by due course of law, shall be punished by imprisonment in the Penitentiary for not less than one nor more than thirty years, and fined in the discretion of the Court, except where the death of some human being results from such impediment, and in that case the offender shall be adjudged guilty of murder, and shall suffer death; *Provided*, that nothing herein shall in any manner take away any right of action for damages for injury to the person or property of any person or body corporate, caused by any injury, obstruction or damage done to any railroad or its buildings, tracts or constructions. (Gen. Stat., C. CXXVIII, Sec. 18, p. 712; 17 Stat. 101.)

OFFER.

(*See Courts of Trial Justices.*)

OFFICES.

1st.—Buying and Selling an Office.
2nd —Forfeiture of Office.

1st.—BUYING AND SELLING AN OFFICE.

If any person or persons bargain for the purchase or sale of, or sell, any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive, have or take any money, fee, reward,

or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward or any other profit, directly or indirectly, for any office or offices, or any part of any of them, or to the intent that any person should have, exercise or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them, which office or offices, any part or parcel of them, shall in any case touch or concern the administration or execution of justice, or the receipt, control or payment of any public treasure, money, rent, revenue, account, auditorship, or surveying of any public lands, tenements, woods, or hereditaments, or which shall touch or concern any clerkship to be occupied in any Court of record wherein justice is to be ministered, every such person or persons shall not only lose and forfeit all right and interest in or to any of the said office or offices, deputation or deputations, or any part of any of them, but shall immediately, by and upon the same fee, money or reward given or paid, or upon any such promise, covenant, bond or agreement, had or made for any fee, sum of money or reward, to be paid as aforesaid, be adjudged a disabled person in the law, to all intents and purposes, to have occupy, and enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which any such person or persons shall so give or pay anysum of money, fee or reward, or make any promise, covenant, bond or other assurance to give or pay any sum of money, fee or reward. (Gen.Stat. C. XXXIII, Sec. 1, p. 212.)

Sale of Offices void.—Every bargain, sale, promise, bond, agreement, covenant or assurance, as before specified, shall be void to and against him and them, by whom any such bargain, sale, bond, promise, covenant or assurance shall be had or made. (*Ib.* S. 2.)

Official acts performed after offense but before removal, valid.—If any person or persons shall offend in any thing contrary to the tenor and effect of Section 1 of this Chapter, yet, notwithstanding, all judgments given, and all other act and acts executed or done by any such person or persons so offending, by authority or color of the office or deputation which ought to be forfeited, or not occupied, or not enjoined, by the person so offending, after the said offense so by such person committed or done, and before such person so offending for the same offense be removed from the exercise, administration and occupation of the said office or deputation, shall be and remain good and sufficient in law to all intents, constructions and purposes. (*Ib.* S. 3.)

2ND.—FORFEITURE OF OFFICE

In general, all wilful breaches of the duty of an office are forfeitures of it, and punishable by fine, &c.; for since every office is instituted, not for the sake of the officer, but for the good of some other, nothing can be more just, than that he, who either neglects or refuses to answer the end for which his office was ordained, should give way to

others who are both willing and able to take care of it, and that he should be punished for his neglect or oppressive execution; but the particular instance wherein a man may be said to act contrary to the duty of his office, though various, are yet so generally obvious, that it is needless to enumerate them. (2nd Tomlins, 671.)

There are, says Lord Coke, three causes of forfeiture or seizure of offices by matter in deed

1st.—By Abuser.
2nd.—Non user.
3d.—Refusal.

1st. *Abuser*; as by a marshall or other jailor's permitting escapes.

2nd *By Non-user*; in which there is this difference; when the office concerns the administration of justice or the commonwealth the officer *ex-officio* ought to attend without request, thereby non-user or non-attendance, the office is forfeited; but where an officer is not obliged to attend, but upon demand or request made by him whose officer he is, then without such demand or request there can be no forfeiture; and herein also, Lord Coke, in another place, takes the following diversity, viz: that non-user, of itself, without some special damage, is no forfeiture of private offices, but that it is otherwise of a public one, which concerns the adminstration of justice,

3rd. *As to refusal*, he says, that in all cases where an officer is bound upon request to exercise his office, if he does not do it upon request, he forfeits it; as if the steward of a manor be requested by the lord to hold a Court, if he does not do it, it is a forfeiture. (2nd Tomlins, 669 and 70).

OFFERING BRIBES.

(*See Bribery.*

OPRESSION IN OFFICE.

(*See Negligence.*)

OYSTER BEDS.—PROTECTION OF.

Penalty for Stealing Oysters from Beds.—If any person or persons shall feloniously gather, remove, take or steal, from any oyster bed, laying or fishery any oysters or oyster brood, there growing, lying or being, such oyster bed, laying or fishing, being the property of any other per-

son or persons, and cultivated and used by the proprietor or proprietors thereof, for the production, growing and improvement of oysters, and being sufficiently marked out, every person or persons so offending shall be deemed and held guilty of larceny, and he, she or they, or his, her or their aiders, helpers, abettors or accessories, being thereof convicted by due course of law, shall be punished as in cases of larceny. (Gen. Stat., C. LXXVIII., S. I., p. 404.)

Fine for Using Nets, &c.—If any person or persons shall unlawfully and wilfully use any dredge or any net, instrument or engine wha soever, within the limits of any such oyster bed, laying or fishing as aforesaid, for the purpose of taking oysters or oyster brood, although none be actually taken, or shall with any net, instrument or engine, drag upon the ground or soil of any such oyster bed, laying or fishery, every person or persons so offending, shall be held and deemed guilty of a misdemeanor, and upon being convicted thereof, shall be punished by fine and imprisonment, or both, as the Court may award, such fine not to exceed one hundred dollars, and such imprisonment not to exceed six months. (*Ibid.*, Sec. 2, p. 405.)

Persons May Carry Off Oyster Shells from Certain Lands.—It shall and may be lawful for all and every person and persons to collect and carry off oysters snd oyster shells, below high water mark, from all lands for which warrants of survey have been taken out, and which have not been passed and confirmed by grants under the signature of His Excellency the Governor. *Ib.*, Sec. 3.)

Not to apply to Fishing.—Nothing herein contained shall be so construed as to prevent any person or persons from catching or fishing for any swimming or floating fish, within the limits of any oyster bed, laying or fishery with any net, instrument or engine adapted for taking swimming or floating fish. *Ib.*, S. 4.)

PEACE.—SURETY FOR.

(*See Behavior.*)

PEDDLERS.

(*See Hawkers and Peddlers.*)

PERJURY.

1st.—What is.
2d.—Evidence of.
3d.—Punishment.

1st.—WHAT IS.

False Swearing when Perjury.—Whoever shall, wilfully and knowingly, swear falsely on taking any oath required by law, and administered by any person directed or permitted by law to administer such oath, shall be deemed guilty of perjury, and on conviction, incur the pains and penalties of that offense. (Gen. Stat., C. CXXXI., S. 6, p. 724.)

Perjury by Common Law.—Perjury by the common law, appears to be a wilful false oath by one who, being lawfully required to depose the truth in any proceeding in a Court of Justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not. (2d Russell, 517.)

Subornation of Perjury at Common Law.—Subornation of perjury by the common law, is an offense in procuring a man to take a false oath, amounting to perjury, who actually takes such oath. But it seems clear that if the person, incited to take such an oath, do not actually take it, the person by whom he was so incited, was not guilty of subornation of perjury; yet it is certain that he is liable to be punished, not only by fine, but also by infamous corporal punishment. (2d Russell, 517.)

It has been said that no oath will amount to perjury, unless it be sworn absolutely and directly, and therefore, that he who swears a thing according as he thinks, remembers or believes, cannot, in respect to such an oath, be found guilty of perjury. But DeGrey, Ld. C. J., appears to have laid down a different doctrine. And Lord Mansfield, C. J., is stated to have said, "it is certainly true that a man may be indicted for perjury on swearing that he believes a fact to be true which he must know to be false." It is further said that, upon this question being agitated in the Court of Common Pleas, all the Judges were unanimous that belief was to be considered as an absolute term, and that an indictment might be supported upon such a statement. (2 Russell, 518.)

2d.—EVIDENCE OF.

Two Witnesses Necessary.—In cases of perjury two witnesses are required, as well to prove the facts sworn to, as the falseness of the oath. (State *vs.* Howard, 4th McCord, 159.)

But one witness is sufficient if he be corroborated by material circumstances.

Party Prejudiced, Competent.—The party prejudiced by the perjury is a competent witness.

So also is a witness who has before sworn to the same fact, or is himself indicted for perjury.

3D.—PUNISHMENT.

Perjury and Subornation of.—Whenever, either by the subornation, unlawful procurement, sinister persuasion or means of any others, or by his own act, consent or agreement, shall wilfully and corruptly commit any manner of wilful perjury, by his deposition in any of the Courts of this State, or being examined *ad perpetuam rei memoriam*, and being thereof duly convicted, shall be fined in the sum of one hundred dollars, and shall suffer imprisonment by the space of six months, and the oath of such person shall not be received in any Court of record within this State. (Gen. Stat., C. CXXXI., S. I., p. 723.)

Procuring Witnesses to Commit Perjury.—Whoever shall unlawfully and corruptly procure any witness or witnesses by letters, rewards, promises, or by any other sinister or unlawful means whatsoever, to commit any wilful and corrupt perjury, in any manner or cause whatsoever, in suit and variance, by any writ, action, complaint, or infraction, in anywise touching or concerning any lands, tenements or hereditaments, goods, chattels, debts, or damages, in any of the Courts of this State, or shall unlawfully and corruptly procure or suborn any witness or witnesses, which shall be sworn to testify *in perpetuam rei memoriam*, shall be fined in the sum of two hundred dollars. (*Ibid*, Sec. 2.)

Imprisonment in place of Fine—Persons Convicted Incompetent to Testify Thereafter.—Whoever, being convicted as provided in the two paragraphs immediately preceding, shall not have goods or chattels, lands or tenements, to the value of two hundred dollars, shall, for his said offense, suffer imprisonment for the space of one half year, and thenceforth shall not be received as a witness in any Court of Record within this State (*Ibid*, Sec. 3.)

Additional Punishment for Perjury.—Besides the punishment already to be inflicted by law for so great crimes, it shall and may be lawful for the Court or Judge before whom any person shall be convicted of wilful and corrupt perjury, or subornation of perjury, to order and send such person to the State Penitentiary, there to be kept to hard labor any term or time not exceeding the term of seven years. (*Ibid*, Sec. 7.)

PETIT LARCENY.

(*See Larceny.*)

PHYSICIAN.

Any person living in this State, or any person coming into this State, who shall practice medicine in any of its departments, or perform or attempt to perform, any surgical operations upon any person within the limits of this State, who has not attended two full courses of instructions, and graduated at some school of medicine, either in the United States or some foreign country, or who cannot produce a certificate of qualification from some State medical society, and is not a person of good moral character, (unless such person has been continuously engaged in the practice of medicine for a period of ten years or more, and can produce a certificate to that effect, either from some physician of good standing, or from three citizens, one whom shall be qualified to administer an oath according to the laws of this State); such person shall, upon conviction thereof, be fined not less than fifty, nor more than one hundred dollars for such offense, and, upon conviction for a second violation, shall, in addition to the above fines, be imprisoned in the County Jail of the County in which said offense shall have been committed, for the term of ninety days: *Provided*, that nothing herein contained shall in any way be construed to apply to any person practicing dentistry, or from also practicing midwifery. (Gen. Stat., C. CXXXIV, p. 737; *Ibid*, C. XXXII, Sec. 1.)

POLL TAX.

Non-Payment of a Misdemeanor.

Every male citizen between the ages of twenty-one and sixty years, except those incapable of earning a support from being maimed, and except those who are now exempt by law, or from any other cause, shall be deemed taxable polls; and should any person fail or refuse to pay said poll-tax, he shall be deemed guilty of a misdemeanor, and, on conviction thereof before any Trial Justice or other Court having jurisdiction of the same, shall be punished by a fine which shall not exceed ten dollars, together with the cost of said suit, or by imprisonment in the County Jail for a term not exceeding thirty days. (16 Stat., 797; 17 Stat., 120.)

PLAYS AND SHOWS.

(*See Vagrant.*)

All persons representing publicly, for game or reward, any play comedy, tragedy, interlude or farce, or other entertainment of the stage, or any part thereon, all fortune tellers and those who exhibit wax fig-

ures, or shows of any kind whatsoever, shall pay a tax of three dollars per day when they make those exhibitions at towns or villages that are not incorporated; and the said sum of three dollars shall be paid into the hands of the Clerks of the Circuit Courts respectively, who shall be bound to pay over the same into the County Treasury annually. (Gen. Stat., C. LXXX, Sec. 17, p. 414.)

Clerks and Trial Justices may issue Executions if not Paid.—If any person who is required to pay the aforesaid tax, shall neglect to do so before such representation or exhibition, it shall be the duty of the Clerk of the Court or any Trial Justice, for the County where the same may be due, to issue an execution for double the amount of the tax so imposed, which execution may be directed to any Sheriff or Constable of this State, and against the body and goods of the person so being liable, and which may be levied in any County in the State; and every Trial Justice who shall so issue execution, shall cause the amount of the same to be paid to the Clerk of the Court for his County; and the Clerks of Court shall pay annually, into the County Treasury, all such taxes as may come into their hands, respectively: *Provided*, that nothing herein contained shall be construed to extend to any incorporated town, village, or city. (*Ibid*, Sec. 18.)

Town Officers may Collect.—The Intendent and Wardens of all incorporated towns and villages, (the city of Charleston excepted,) shall have power to collect the taxes from all persons representing publicly, within their respective corporate limits, for gain or reward, any plays, shows of what nature or kind soever, which, by the above paragraph are made payable to the Clerks of Court, the same to be used for the purposes of said corporations respectively. (*Ibid*, Sec. 19.)

City Council of Charleston to License Theatrical Entertainments.—The City Council of Charleston are authorized to permit and license any person or persons to exhibit theatrical entertainments within said city, and to impose and collect for each and every license, such sum as they may, from time to time, deem reasonable: *Provided*, the same does not exceed five hundred dollars. (*Ibid*, Sec. 20.)

Circus and Travelling Shows to take out License.—Any circus or other show traveling in connection therewith, and exhibiting for gain, shall, before exhibiting in any County in this State, obtain a license from the Clerk of the Court of said County in which said circus or other show is intended to exhibit.

License on.—And shall pay to the said Clerk for said license, one hundred dollars for each and every day said circus or other show shall be exhibited; and said Clerk shall forthwith pay over to the County Treasurer of said County, all moneys by him received on account of said license, to be applied to the use of said County. (15 Stat., 854, Sec 1.)

Penalty for Violating the Section Above.—Any person or persons, company or companies, violating this Statute, shall, upon conviction in

any Court of competent jurisdiction, be fined in the sum of two hundred dollars and all costs, and be imprisoned in the jail of said County, not less than one month, nor more than three months, in the discretion of the Court. (*Ibid*, Sec. 2.)

Municipal Authorities may Require Licence.—Nothing herein contained shall be construed to prevent the municipal authorities of any incorporated city or town in this State, from levying and collecting such fines or licenses as may be imposed by such municipal authorities. (*Ibid*, Sec. 3.)

POISON.

(*See Homicide.*)

Attempt to Poison.—Whoever shall unlawfully and maliciously administer to, or cause to be taken, by any person, any poison or other destructive thing, with intent to kill such person, every such offender and every person counseling, aiding or abetting such offender, shall be guilty of felony, and shall be punished by imprisonment in the Penitentiary, not exceeding ten years, nor less than two years. (Gen. Stat., C. CXXVIII, Sec. 5, p. 709.)

PORK AND BEEF.

What Barrels to Contain and Weigh—How Packed.—Every barrel of pork or beef packed and sold in this State, shall contain thirty gallons and two hundred pounds weight of wholesome, well cured meat, in the same, which shall be weighed by the packer, and well packed with salt and pickle, each piece not to weigh more than eight pounds, and not to be cut or mangled further than to take out the kernels or where the bones require it, and not more than two heads in one barrel of pork. No beef's head or shanks shall at all be packed. (Gen. Stat., C. LI, Sec. 31, p. 303.)

Penalty for Killing Cattle for Packing not Previously Penned Twelve Hours.—In case any person shall kill any cattle to put in barrels for sale, without having first penned them for twelve hours before killing them, every such person shall forfeit the sum of ten dollars, current money, for every head of cattle so killed, to the person who will sue for the same, to be recovered before any Trial Justice. (*Ibid* Sec 32.)

To be Made of Seasoned White or Water Oak.—Every person or persons in this State shall make his and their casks for packing beef or pork, of sound, dry and well seasoned white or water oak timber, without sap, the heads as well as bodies of which casks shall be made tight, so as to hold pickle, and shall fill the said casks with water before the same are packed with any beef or pork. (*Ibid*, Sec. 33.)

POOR CHILDREN.

(*See Apprentices.*)

POSSE-COMITATUS.

Constables have power to order out.

(*See Constables.*)

POWER OF ATTORNEY.

(*See Attorney.*)

PRODUCTS OF SOIL—LARCENY OF.

(*See Larceny*)

PROFANE SWEARING.

Cursing and Swearing.—Whoever shall profanely swear or curse in the presence of any Trial Justice, or of the Mayor or other head officer for any city or town corporate, where such offense is or shall be committed, or that shall be thereof convicted by oath of one witness, or by the confession of the party offending, before any Trial Justice of the County, or Mayor, or other chief officer of such city or town corporate where the said offense shall be committed, shall forfeit and pay to the use of the poor of the County where such offense or offenses shall be committed the respective sums herein mentioned, that is to say: Every servant, day laborer and common seaman, twenty-five cents; and every other person, fifty cents; and in case any of the persons aforesaid shall, after conviction, offend a second time, such person, shall forfeit and pay double, and, if a third time, treble the sum, respectively, by him or her to be paid for the first offense. (Gen. Stat., Chap. CXXXIII, Sec. 6, p. 736.

Forfeitures, how Collected.—Upon neglect or refusal of payment of the said forfeiture, any Trial Justice of the County, or Mayor, or other head officer, of any city or town corporate, where the said offense shall be committed, is hereby authorized and required to direct and send his warrant to any Constable of the County where the offense shall be committed, or where the offender shall inhabit, thereby commanding him

to levy, by distress and sale of the goods of the offender, the same so forfeited, for the use of the poor of the County, as aforesaid. (*Ibid*, Sec. 7.)

Penalty for not Enforcing this Act.—If any Trial Justice or Chief Magistrate shall wilfully and willingly omit the performance of his duty in the execution of this Act, he shall forfeit the sum of twenty-five dollars. the one moiety to the use of the informer, to be recovered by action. (*Ibid*, Sec. 8.)

Time for Prosecution upon said Statute.—No person shall be prosecuted or troubled for any offense against the provisions of this Statute, unless the same be proved or prosecuted within ten days next after the offense committed. (*Ibid*, Sec. 9.)

Convictions to be Registered.—The Trial Justices, or Mayor, or other head officer, shall register, in a book to be kept for that purpose, all the convictions made before him upon the provisions of this Act, and the time of making thereof, and for what offense, and shall certify the same to the Court of General Sessions for the County where the offenses are committed, to be kept there upon record by the Clerk, to be seen without fee or reward. (*Ibid*, Sec. 10.)

RAPE.

1st —Of Rape.
2d.—Carnal Knowledge of Female Children.
3d.—Assault, with Intent to Commit a Rape.
4th.—Punishment.

1st.—OF RAPE.

Definition.—Rape is the carnal knowledge of a woman by a man forcibly and unlawfully against her will.

It is the essential character of this crime that it must be against the will of the female on whom it is committed. And if a woman be beguiled into her consent by any artful means, it will not be a rape, and, therefore having carnal knowledge of a married woman, under circumstances which induced her to suppose it was her husband, was held by a majority of Judges not to be rape However, the crime is not mitigated by showing that the woman yielded, at length, to violence, if her consent was obtained by duress or threats of murder; nor will any subsequent acquiescence on her part do away the guilt of the ravisher; and it is no defense to show that the prosecutrix was taken at first with her own consent, if she was afterwards forced against her will. The circumstances of the woman's generally submitting to illicit intercourse, will not diminish the guilt of her ravisher, because she is still under the pro-

tection of the law, and must not be deprived of the opportunity of repentence.

Formerly it was said to be no rape for a man to have forcible knowledge of his own concubine; but the law now presumes the possibility of her return to virtue. A man cannot, indeed, be himself guilty of a rape on his own wife, for the matrimonial consent cannot be retracted; but he may be criminal in aiding and abetting others in such a design. (4th Bl. Com, 213—note.)

All who were present, aiding and assisting a man to commit a rape, are principal offenders in the second degree, whether they be men or women; and they are also ousted of clergy. And there may be accessaries before and after in this offense; for though it may be felony by a Statute, which speaks only of those who commit the offense, yet accessaries, before and after, are consequently included; but such accessaries are not subject to capital punishment. (1st Russell, 557.)

As to the evidence in case of rape; if the prosecutrix presently discovered the offense, and made search for the offender, if the party accused fled for it, these and the like are concurring circumstances which give greater probability to her evidence. But, on the other side, if she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had an opportunity to complain; if the place, where the fact was alleged to be committed, was where it was possible she might have been heard, and she made no outcry; these and the like circumstances carry a strong, but not conclusive, presumption that her testimony is false or feigned (4th Bl. Com, 214.)

2D.—CARNAL KNOWLEDGE OF FEMALE CHILDREN.

If any person shall unlawfully and carnally know and abuse any woman-child under the age of ten years, every such unlawful and carnal knowledge, shall be felony, and the offender thereof, being duly convicted, shall suffer as for rape. (Gen. Stat., Chap. CXXVIII, Sec. 13, p. 711.)

3D.—ASSAULT WITH INTENT TO COMMIT A RAPE.

Where there is no reason to expect that the facts and circumstances of the case, where given in evidence, will establish that the crime of rape has been completed, the proper course will be, to prefer an indictment at common law, for an assault with intent to ravish; which offense, though only a misdemeanor, yet is one of a very aggravated nature, and has, in many instances, been visited with exemplary punishment. (1st Russell, 563.)

4TH.—PUNISHMENT.

From and after the lapse of sixty days from the passage of this Act any person who shall commit either of the crimes of arson or rape, shall, upon conviction, suffer death by hanging, in the same form and manner

as is now provided by law for wilful murder: *Provided, however*, That in case where the prisoner is found guilty, the jury may find a special verdict, recommending him to the mercy of the Court, whereupon the punishment shall be reduced to imprisonment in the Penitentiary with hard labor during the whole life-time of the prisoner. (16 Stat., 631.)

RECEIVING STOLEN GOODS.

In all cases whatever, where any goods and chattels, or other property, of which larceny may be committed, shall have been feloniously taken or stolen by any person or persons so taking or stealing the same shall, amount to grand larceny, or some greater offense, or to petit larceny only; every person who shall buy or receive any such goods or chattels, or other property, knowing the same to have been stolen shall be held and deemed guilty of, and may be prosecuted for, a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment, although the principal felon or felons be not previously convicted, or be convicted of petit larceny only, and whether he, she or they is, or are, amenable to justice or not. (Gen. Stat, Chap CXXIX, Sec. 18, p. 717.)

RECOGNIZANCE.

A recognizance is an obligation of record entered into before a Court or officer duly authorized for that purpose, with a condition to do some act required by law, which is therein specified. (2 Bl. Com., 341; 1 Chit. Cr. Law, 90.)

1st.—Scale by which to be Regulated.
2d.—How Estreated.
3d.—Discharge of.
4th.—Forms.

1st.—SCALE BY WHICH REGULATED.

Recognizances entered into before a trial Justice shall be according to the following scale:

1. If the offense charged be punishable with fine and imprisonment, or either, the recognizance of the accused shall not be for less than two hundred dollars; and, if the fine be specified or limited by Statute, it shall not be for less than the greatest extent of such fine;

2. The recognizance of any prosecutor or witness, in case of misdemeanor, shall not be for less than one hundred dollars; and, in case of capital felony, for not less than five hundred dollars; though, in all cases the Trial Justice shall cause the same to be in such larger amount as the circumstances may seem to require. (Gen Stat., C. CXXXVIII, Sec. 6, p. 794.)

2D.—HOW ESTREATED.

To be in Name of State.—In all recognizances by any person for keeping the peace, or good behavior, or for appearing as a party, surety or witness, at any Court of criminal jurisdiction within the State, the sum or sums of money in which any such person shall be bound, shall be made payable to the State; and every such recognizance shall be good and effectual in law, provided it be signed by every party thereto, and also acknowledged in the presence of a Judge or Trial Justice, who shall certify such acknowledgement, otherwise such recognizance shall be void. (*Ibid*, C. CXLI., S. 7.)

Proceedings in Case of Forfeiture of Recognizances.—Whenever such recognizance shall become forfeited by non-compliance with the condition thereof, the Attorney-General or Solicitor, or other person acting for him, shall, without delay, issue a notice to every party bound in such forfeited recognizance, to be and appear at the next ensuing Court of Sessions, to show cause, if any he has, why judgment should not be confirmed against him; and if any person so bound fail to appear, or appearing, shall not give such reason for not performing the condition of such recognizance as the Court shall deem sufficient, then the judgment on such recognizance shall be confirmed. *Ibid*, S. 8.)

Execution to Issue for Sale of Estate of Offending, &c.—In every case where any such recognizance shall be adjudged so forfeited, or where any fine shall be imposed by, or recovered for, the use of the State, in any Court or before a Trial Justice, if the party incurring such fine or forfeiture shall fail to pay down the same, with the costs of prosecution, then a writ, in the nature of an execution, shall issue by virtue of which the sheriff or his deputy, shall sell, (in the same manner as property is sold under execution in civil cases,) so much of such offender's estate, real or personal, as may be necessary to satisfy the fine or forfeiture, and also the costs of prosecution, and also the reasonable charges of taking, keeping and selling such property, returning the overplus, if any, to the offender, together with a bill of the fine or forfeiture, with costs and charges, if he require it. (*Ibid*, S. 9.)

If amount not Made, Offender may be Committed to Jail.—If the sheriff or his deputy, return on oath that such offender refused to pay, or has not any property, or not sufficient whereon to levy, then a writ of *capias ad satisfaciendum* shall issue, whereby he shall be committed to the common jail, until the forfeiture, costs and charges, shall be satisfied, entitled, however, to the privilege of insolvent debtors. (*Ib.*, S. 10.)

Court May Remit Forfeiture in Certain Cases.—If any person shall forfeit a recognizance from ignorance or unavoidable impediment, and not from wilful default, the Court of Sessions may, on affidavit, stating the excuse or cause thereof, remit the whole or any part of the forfeiture, as may be deemed reasonable (*Ibid.*, S. 11.)

3D.—DISCHARGE OF.

The defendant entered into a recognizance, "personally to appear before the Court of Sessions," to answer to a bill of indictment for an assault on one Cunningham; at the subsequent January term he was indicted, and the bill was traversed by counsel; at a subsequent term, the Attorney-General entered a *nol pros.* on the indictment and gave out another. A motion was made on the part of the bail to discharge him from his liability, on the ground that the defendant had performed the condition of the recognizance; the motion was granted by the Presiding Judge, but on a motion to reverse the order, the Court held that the undertaking of the bail was, that his principal should personally appear and abide the final termination of the case; that the traverse of the case, by an attorney, was no more a performance of the undertaking than an appearance or plea would be in a civil action; that the entry of a *nol pros.* by the Attorney-General, was not a final termination of the case, as he might in his discretion, give out another bill, which the defendant would be still bound by his recognizance to answer, and reversed the order of the Circuit Judge. (State *vs.* Haskell, Riley's Cases, 97.)

In the case of the State *vs* Le Cerf, 1st Bailey, 410, it was held, that a surrender to a deputy sheriff or constable of the principal, bound in a recognizance by the surety, did not discharge the recognizance.

The surrender in such a case, must be to some officer who may commit the principal or take another recognizance.

This rule recognizes as legal, the practices of magistrates to admit of surrender to themselves, and taking other surety or committing the principal.

4TH.—FORMS.

FORM NO. 159.—APPEARANCE RECOGNIZANCE OF DEFENDANT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———. } *Appearance Recognizance.*

Be it remembered, that on the —— day of —— A. D. 18 ——, personally appeared E. F., G. H. and M. N, before me, A. B., Trial Justice in and for the said County and the said State, who acknowledge themselves indebted to the State of South Carolina, that is to say, the said E. F. in the sum of ——— dollars, and the said G. H. in the sum of———dollars, and the

said M. N., in the sum of ——dollars, like money, to be levied of their separate lands, goods and chattels, respectively, to and for the use of the said State of the above mentioned E. F., shall fail in performing the condition underwritten

The condition of this recognizance is such, That if the said E. F., shall personally appear before the Court —— in the state aforesaid, to be holden at the usual place of judicature, in —— on the —— in —— next, then and there to answer to a bill of indictment to be preferred against him the said E. F., for——and to do and receive what shall be enjoined by the Court, and not to depart the Court without license, and in the mean time that the said E. F. do keep the peace of the State, and be of good behavior towards all the citizens thereof, and especially towards the said C. D., then this recognizance to be null and void, or else to remain in full force and virtue.

Taken and acknowledged the day and year above written, before me.

A. B., [L. S.]
Trial Justice

E. F., [L. S.]
G. H., [L. S.]
M. N., [L. S.]

FORM NO. 110.—RECOGNIZANCE TO PROSECUTE OR TESTIFY.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——.

Be it remembered, That on the —— day of —— in the year of our Lord one thousand eight hundred and——personally appeared) *name of prosecutor or witness and surety, if any should be required*,) before me A. B., Trial Justice in and for the said County and the said State, who acknowledged themselves indebted to the State of South Carolina, that is to say, the said (*prosecutor or witness as the case may be*) in the sum of—— dollars, and the (*names of surety if any should be required*,) in the sum of ——dollars, like money to be levied of their separate lands and tenements, goods and chattels, respectively, to and for the use of the said State, of the above mentionad (*the prosecutor or witness*,) shall fail in performing the condition underwritten.

The condition of this recognizance is such, That if the said——shall personally appear before the Court of—— to be holden at the usual place of judicature, in —— on the —— in —— then and there to (*prosecute or testify as the case may be.*) on behalf of the State on a bill of indictment to be preferred against E. F. for —— and not to depart

thence without leave of the said Court, then this recognizance to be null and void, or else to remain in full force and virtue.

Taken and acknowledged the day and year above written, before me.

A. B., [L. S.]
Trial Justice.

——————— [L. S.]
——————— [L. S.]
——————— [L. S.]

RENT.

(*See Distress, Lands and Tenements, etc.*)

Landlords have Prior Liens for one-third of Crops.—Each landlord leasing lands for agricultural purposes shall have a prior and preferred lien for rent to the extent of one-third of all crops raised on his lands, and enforcible in the same manner as liens for advances, which said lien shall be valid without recording or filing. (16 Stat. 410, S. 5.)

Every lien for advances and for rent, when the agreement is for more than one-third of the crop, shall be filed in the office of the Register of Mesne Conveyance for the county in which the lienor resides within thirty days from the date of the lien, and said lien for rent over one-third the crop shall thereby be made valid; and he shall keep an index of all such liens so filed, for each of which he shall receive fifteen cents from the party filing the same, and this shall be a sufficient record of the same. (*Ibid*— S. 6.)

All Crops Liable for Rent.—By A. A., 1878, No. 627, "the above Act shall extend to all crops raised on the lands leased by the landlords, whether the same be raised by the tenant or other person." (Sec. 1.)

"That, subject to the liens provided for in said Act and enforcible in the same way as therein provided, the landlords shall have a lien on all the crope raised by the tenant for all advances made by the landlord during the year. (Sec. 2)

When a Portion of Crop is Removed.—"That in case any portion of the crop is removed from the land rented or leased, and the proceeds thereby not applied to the payment of the rent for the year or other liens provided for in said Act, and in this Act, and this fact shall be made to appear by affidavit, persons holding liens as provided for in said Act, and in this Act, and the fact shall be made to appear by affidavit, persons holding liens as provided for by said Act, and under this Act, shall have the right to proceed to collect the amounts which will become due for rent or advances in the same way as if the same had become due according to contract before such removal." (*Ibid*, Sec. 3.)

REPLEVIN.

(*See Distress.*)

RESCUE.

(*See Escape.*)

Is the knowingly and forcibly freeing another from imprisonment or arrest.

The Sheriff's return of a rescue, is not of itself sufficient to put the party to answer for it as a felony, without indictment or presentment. And it is the better opinion, that he who rescues one, imprisoned for felony, cannot be arraigned for such offense as a felony, until the principal offender be first attainted; unless the person rescued were imprisoned for high treason. But it is said that he may be immediately proceeded against for a misprision only, if the King please; and if the principal be discharged, or found guilty only of an offense, not capital, such as petit larceny, etc., though the rescuer cannot be charged with felony, yet he may be fined and imprisoned for a misdemeanor. (1st Russell, 384.)

The rescue of one apprehended for treason is itself treason; and the party rescuing one in custody for felony, or suspicion of felony, will, as we have seen, be guilty of a crime of the same kind; though not in all cases punishable in the same degree; for the rescuer will be entitled to his clergy, though the crime of the prisoner rescued were not within clergy. (*Ibid.*)

The rescue of a prisoner, in any of the Superior Courts, committed by the justices, is a great misprision; for which the party, and the prisoner, (if assenting), will be liable to be punished by imprisonment for life, though no stroke or blow were given. (*Ibid*, 385.)

RESISTING AN OFFICER.

The obstructing the execution of lawful process is an offense against public justice of a very high and presumptious nature; and more particularly so when the obstruction is of an arrest upon criminal process. So that it has been holden that the party opposing an arrest upon criminal process becomes thereby *particeps criminis*, that is, an accessary in felony, and a principal in high treason. (1st Russell, 360.)

But in ordinary cases where the offense committed is less than felony,

the obstruction of officers in the apprehension of the party, will be only a misdemeanor, punishable by fine and imprisonment. (*Ibid*, 361.)

It should be observed, that a party will not be guilty of this offense of obstructing an officer, or the process which such officer may be about to execute, unless the arrest is lawful. And in an indictment for this offense, it must appear that the arrest was made by proper authority. Thus, where an indictment for an assault, false imprisonment, and rescue, stated that the judges of Court of Record of the town and county, etc., of P., issued their writ, directed to T. B., one of the sergeants at Mace of the said town and county, to arrest W., by virtue of which T B., was proceeding to arrest W. within the jurisdiction of the said Court, but the defendant assaulted T. B. in the due execution of his office, and prevented the arrest; the Court held that it was bad, as it did not appear that T. B. was an officer of the Court; a sergeant at Mace *ex vi termini*, meaning no more than a person who carries a mace for some one or other. And the Court also held that there could not be judgment, after a general verdict in such a Court, as for a common assault and false imprisonment; because the jury must be taken to have found that the assault and imprisonment were for the cause therein stated; and that cause appeared to have been the attempt by the officer to make an illegal arrest. Lord Ellenborough, C. J., said, "process ought always to be directed to a proper known officer; otherwise, if it may be directed to any stranger, it might be resisted for want of knowledge that the party is an officer of the Court. Then, taking the whole Court together, the jury in effect find that there was an assault and imprisonment, but committed under circumstances which justified the defendant. For if a man without authority attempt to arrest another illegally, it is a breach of the peace; and any other person may lawfully interfere to prevent it, doing no more than is necessary for that purpose; and nothing further appears in this case to have been done." (*Ibid*, 362.)

But where the process is regular, and executed by the proper officer, it will not be competent for a peace officer to obstruct him, on the ground that the execution of it is attended with an affray and disturbance of the peace; for it is an established principle that if one having a sufficient authority, issue a lawful command, it is not in the power of any other, having an equal authority in the same respect, to issue a contrary command, as that would be to legalize confusion and disorder.

The following case upon indictment for an assault and rescue, proceeded upon this principle. Some sheriff's officers having apprehended a man by virtue of a writ against him, a mob collected, and endeavored by violence to rescue the prisoner. In the course of the scuffle, which was ten o'clock at night, one of the bailiffs, having been violently assaulted, struck one of the assailants, a woman, and it was thought for some time that he had killed her; whereupon, and before her recovery was ascertained, the constable was sent for, and charged with the custody of the bailiff who had struck the woman. The bailiff's on the

other hand, gave the constable notice of their authority, and represented the violence which had been previously offered to them; notwithstanding which, the constable proceeded to take them into custody upon the charge of murder, and at first offered to take care also of their prisoner; but their prisoner was soon rescued from them by the surrounding mob. The next morning the woman having recovered, the bailiffs were released by the constable. Upon these facts, Heath, J, was clearly of opinion, that the constable and his assistants were guilty of an assault and rescue, and directed the jury accordingly. (*Ib.*)

RESTITUTION OF STOLEN GOODS.

1st.—Recaption or suit.
2nd.—Restitution by the Court.

1st.—RECAPTION OR SUIT.

A party whose goods have been stolen, may peaceably retake them wherever he happens to find them, unless a new property has been acquired therein. Or if the felon be convicted and pardoned, or be allowed his clergy, the party robbed may bring trover against him for his goods, and recover satisfaction in damages. But such action lies not before prosecution; for so felonies would be made up and healed; and also recaption is unlawful, if it be done with intention to smother or compound the larceny. (4th Blackstone's Com. 364.)

2nd.—RESTITUTION BY THE COURT.

If any felon or felons do rob, or take away any money, goods or chattles, from any person, from their person or otherwise. found guilty thereof, the party so robbed, or owner, shall be restored to his said money, goods and chattles, and the judges, before whom any such felon or felons shall be found, shall award, from time to time, writs of restitution for said money, goods and chattles. (Gen. Stat. C. CXXIX, S. 14, p. 717.)

On a conviction of larceny in particular, the prosecutor shall have restitution of his goods, by virtue of the Statute, 21 Hen. VIII, Ch. 11. For by the common law there was no restitution of goods upon an indictment, because it was at the suit of the King only; and, therefore, the party was enforced to bring an appeal of robbery, in order to have his goods again. But, it being considered that the party prosecuting the offender by indictment, deserves to the full as much encouragement as he who prosecutes by appeal, this Statute was made, which enacts, that if any person be convicted of larceny, by the evidence of the party robbed, he shall have full restitution of his money, goods and chattels;

or the value of them, out of the offender's goods, if he has any, by a writ to be granted by the Justices. And the construction of this Act having been, in a great measure, conformable to the law of appeals, it has, therefore, in practice, superceded the use of appeals of larceny. For instance, as formerly upon appeals, so now upon indictments for larceny, the writ of restitution shall reach the goods so stolen, notwithstanding the property of them is endeavored to be altered by sale in market overt. And though this may seem somewhat hard upon the buyer, yet the rule of law is that "*spoliatus debet, ante omnia, restitui;*" especially when he has used all the diligence in his power to convict the felon. And, since the case is reduced to this hard necessity, that either the owner or buyer must suffer, the law prefers the right of the owner, who has done a meritorious act by pursuing a felon to condign punishment, to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction. And it is now usual for the Court, upon the conviction of a felon, to order (*without any writ*) immediate restitution of such goods, as are brought into Court, to be made to the several prosecutors. (4th Bl Com., 363.)

Yet if it shall appear to the Court, that the party has been guilty of gross neglect in prosecuting, it seemeth that in such case he shall not be entitled to restitution. (Grimke, 372.)

RETAILING SPIRITUOUS LIQUORS.

1st.—The License.
2d —Penalty for Retailing without License.
3d.—Other Penalties.
4th.—Of Informers.

1st.—THE LICENSE.

No license for the sale of spirituous or other intoxicating liquors shall be granted in South Carolina outside of the incorporated cities, towns and villages of this State; and it shall be unlawful for any person or persons to sell such liquors without a license to do so. (17 Stat, Sec. 1,460)

No license for the sale of intoxicating liquors shall be granted by any municipal authorities in any city, town or village in this State, except upon the payment by the person applying for the same to the Treasurer of the County in which such city, town or village is situated, the sum of one hundred dollars, in addition to the license charged by such city, town or village, for the use of such County, to be applied to the ordinary expenses of the County: *Provided*. That all licenses for the sale of intoxicating liquors granted within the limits of the City of Charleston,

the said sum of one hundred dollars shall be paid by the parties obtaining such licenses to the Treasurer of the said City of Charleston for the use of the said city, instead of to the Treasurer of the County of Charleston: *Provided, however*, That the amount now charged by the said City Council of Charleston for a license for a sale of intoxicating liquors shall not be reduced in consequence of the foregoing provision, but that the aggregate of the license fees charged under this Act, and under the Ordinances of the said City, for the sale of intoxicating liquors within the limits of the said City shall not at any time be less than two hundred dollars. (*Ibid*, Sec. 2.)

That hereafter the sale of all wines, fruits prepared with spirituous liquors, bitters, or other beverages of which spirituous liquors form an ingredient, be, and the same is hereby, prohibited within the limits of this State, except in the incorporate limits of cities, towns and villages, where they shall only be sold under the same terms as intoxicating liquors, as above provided for. (*Ibid*, Sec. 3.)

The proper municipal authorities of all incorporated cities, towns and villages shall have power to grant licenses to retail spirituous liquors, inside the corporate limits of such cities, towns and villages, in quantities less than one quart, and to fix the price of the same, which shall not be less than seventy-five dollars, the person to whom the same is granted being first recommended by six respectable tax payers of his neighborhood, and entering into a bond of one thousand dollars, with three good sureties, for the keeping of an orderly house, and for the due observance of all laws relating to the retailing of spirituous liquors. (15th Stat., Sec. 2, 797.)

Also in like manner may grant licenses for the retailing of cider and malt or brewed liquors upon the payment of a license fee of not less than twenty-five dollars, being similarly recommended, and entering into a bond in the sum of five hundred dollars, with two good sureties, for the keeping of an orderly house, and for the observance of all laws regulating the sale of such liquors, and that he will not sell any spirituous liquors or any admixture thereof. (*Ibid*, Sec. 3.)

2d.—PENALTY FOR RETAILING WITHOUT LICENSE.

Any person violating any of the provisions of this Act, (three first paragraphs of this chapter), shall, upon conviction thereof, be fined in a sum of not less than two hundred dollars, or imprisoned for a term not less than six months, or both fined and imprisoned in the discretion of the Court trying the case. (17 Stat., Sec. 4, 460.)

All persons engaged in retailing liquors under license granted as above, shall expose their licenses to public view in their chief place of making sales, and no such license shall authorize sales by any person neglecting this requirement. Any person convicted of retailing spirituous liquors, or any admixture thereof, while engaged in retailing under a license to sell cider, malt or brewed liquors, shall be punished in like

manner as persons convicted of retailing spirituous liquors without license, and shall, beside, forfeit his license. Any person who shall be convicted twice within two years for retailing without license shall not be entitled to receive license for two years next the date of the last conviction, and any license granted to such person shall be utterly without effect, and shall afford no protection. (15 Stat., 800.)

It shall not be lawful for any apothecary, druggist or other person to sell, trade or barter any bitters of which spirituous, or malt liquors are an ingredient, or any other indicated liquors, by the bottle or by the drink, to any person except upon the prescription of a regular physician, unless such apothecary, druggist or other person shall obtain a license therefor as provided for herein. (*Ibid.*)

Peddling ardent spirit in any county in this State is a misdemeanor punishable by a fine of not more than five hundred dollars, or imprisonment for not more than one year, or both in the discretion of the Court; besides the forfeiture of the spirits the same to rest in the county, and if the fines be paid, or the spirits forfeited, one-half thereof shall be paid to the informer. (Gen. Stat., 738.)

3d.—OTHER PENALTIES.

Selling Liquor to known Intemperate persons, minors or insane persons.—Wilfully furnishing any intoxicating drink by sale, gift, or otherwise, to any person of known intemperate habits, or to any person when drunk or intoxicated, or to a minor, or to any insane person, for use as a beverage, shall be held and deemed a misdemeanor, and upon conviction thereof, the offender shall be fined not less than ten dollars, nor more than one hundred dollars, and imprisoned not less than ten days nor more than thirty days; and it shall be lawful for any member of the family, or blood relation, or guardian of such intemperate person or minor, and for the committee of such insane person, or for any Trial Justice of the township where any or either of such persons reside or have their legal settlement, to give a notice in writing to any person or persons engaged in retailing, selling or having intoxicating liquors, forbidding him or them, as the case may be, from furnishing such intemperate person, minor or insane person with intoxicating drinks, or liquors.

How punished.—And if, within three months of the time of such notice, any person to whom the same is given shall furnish, or cause to be furnished, any intoxicating liquor to such intemperate person, minor or insane person, to be used as a beverage, he or they shall be held severally responsible for any injury to person or property which may occur in consequence of such furnishing, and any one aggrieved may recover damage against the person so furnishing by an action instituted in any Court of this State having jurisdiction of civil actions; and in case any wife shall give notice, she shall be entitled to recover of the person furnishing intoxicating liquor to her husband, in an action in

her own name, such damages as any Court or jury may award, for the maintainance of herself and family during the period when her husband, by reason of such furnishing, is incapable of providing for the proper support of her or them; and in any action brought in accordance with the provisions of this Section, the bond of the person furnishing intoxicating drinks or liquors shall be liable for the damages recovered to the extent of the penalty thereof, in case the same cannot be satisfied out of the property of the defendant in such action. (*Ib.*, S 7.)

Punishment for being grossly drunk in the street, &c.—Any person who shall be found drunk or grossly intoxicated in any street, highway, public house or public place, shall be fined, upon view of or upon proof made before any Mayor or other municipal officer or Trial Justice, not exceeding five dollars; and if the same is not paid, imprisoned not exceeding five days; and any person who shall sell intoxicating liquors to such person to be drunk on the premises where sold, whereby the said person shall become intoxicated, sha l, besides his liability as above be liable to pay to the wife, parent, child or guardian of the person, so found intoxicated the sum of five dollars for every such offense, to be recovered in an action of debt before any Trial Justice having jurisdiction of the person of the defendant. *Provided*, that no suit shall be instituted after ten days from the commission of the offense mentioned herein. (*Ib.*, S. 8.)

Liability of seller in case of riot or breach of peace on premises.—Whenever any riot or other breach of the peace shall occur at or within any tavern, drinking saloon, or other place where intoxicating liquors are sold, the proprietor or keeper of such place shall be deemed and taken to be an aider and abettor in such riot or other breach of the peace, and shall be liable to be prosecuted and punished as such, unless such person can show that such riot or other breach of the peace was not caused by the persons engaged therein becoming intoxicated on said premises. (*Ib*, S 9.)

Selling on Snnday.—It shall not be lawful for any person to sell, trade or barter any spirituous or malt liquors, cider or wine, on Sunday; and any person so doing shall be liable to a fine of not less than ten dollars or more than two hundred dollars, or imprisonment for not less than ten days or more than two months. (*Ib.*, S. 10.)

Debts for liquor to be lost.—If any tavern keeper shall give credit to any person or persons for spirituous liquors, he, she or they so trusting or giving credit to any person or persons, as aforesaid, shall lose the debt, and be forever disabled from sueing for or recovering the same, or any part thereof. And any note, bill, bond, or other security, which may be given for any spirituous liquors sold and drank in or at his or her house, shall be void; and if any tavern keeper shall sue for any such debt, the person or persons so sued shall and may plead this Section in bar thereof. (Gen. Stat., C. LXXX, S. 10.)

Liquors to be Openly Sold.—Every vendor or retailer of spirituous liquors, who shall clandestinely, or behind or within any screen, booth, or other place of concealment, exchange, give, deliver, sell or retail any spirituous liquors, shall, upon conviction, be fined in a sum not less than fifty dollars, nor more than two hundred dollars, according to the discretion of the presiding judge. (*Ibid.* S. 14.)

Selling near Church or Place of Worship.—No person or persons shall hereafter retail, sell or otherwise dispose of, any spirituous or other intoxicating liquors, within one mile of any church, meeting house, or other place set apart for the worship of Almighty God, on the day or days of worship, under the penalty of fifty dollars, to be recovered by action or indictment in any Court having jurisdiction thereof, the money to be applied to the use of the county in which such act shall be committed.

Proviso.—Provided, that the section shall not be considered to interfere with or affect the rights of persons who may reside within one mile of such place of worship, and who may be licensed to retail such liquors according to law, so as to prevent their retailing at their own house. (*Ibid*, S. 15.)

4TH.—OF INFORMERS.

It shall be the duty of the Court, Mayor or other municipal authorities of a city, town or village, or Trial Justice, before whom any fine may be recovered in accordance with the provisions of this Act, to award to the informer or prosecutor a reasonable share thereof for his time and trouble, but not in any case exceeding one-third, and the residue, as well as the proceeds of all forfeited bonds, shall be paid to the Trustees of the Public Schools of the School District wherever the parties convicted reside. (15 Stat. 801.)

RETURN.

(*See Appeal.*)

REWARD.

FOR INFORMING OF FIRE HUNTERS.

(*See Hunting.*)

FOR APPREHENDING BURGLARS.

(*See Burglary.*)

RICE.

Fraudulent Mixture to be Forfeited to the State.—If any planter or other person shall sell or expose for sale to any merchant, factor or any other person, at any port or place of exportation within this State, any casks or barrels of rice which, upon opening or unmasking the same, shall be found to contain any unfair and fraudulent mixture of small or damaged rice, then, and in every such case, the seller of the said rice, or person offering the same to sale, shall immediately, on request of the buyer, or person offering to buy the same, name one indifferent person, being a freeholder, and the said buyer another, to view the said rice, and if such two persons shall agree in opinion and certify the same in writing under their hands, that such rice was deceitfully and fraudulently packed and exposed for sale, every such cask or barrel, so fraudulently packed and exposed for sale, shall be forfeited to the State, and the same shall be sold or caused to be sold by the State Treasurer or by the person or persons who shall condemn the same, for the use aforesaid, who shall be allowed, thereout, five per cent., for their trouble. (Gen. Stat. CLI, S. 34.)

Proceedings in case Sellers do not Nominate Arbitrators.—If the seller shall refuse to nominate a person to view the said rice, then the buyer shall nominate both the persons to view such rice, who shall have the same power as if one had been named by the seller and one by the buyer. *Provided*, that in case the said persons nominated as aforesaid shall not agree in opinion, they shall have power to nominate a third person, being a freeholder as aforesaid, who shall have the same power as the first two have; and in case either of the said two persons shall refuse or neglect to join, or cannot agree in nominating such third person, then, and in such case any Trial Justice, on notice given by both or either of the said persons, shall, and he is hereby, required to nominate such third person, which third person shall have the same power in the premises as if he had been nominated by both. And such adjudication and certificate shall be made within twenty-four hours from the first application, and the said certificate shall be deemed a sufficient condemnation of the said rice, to warrant the sale thereof as aforesaid; any law, statute, usage or custom, to the contrary notwithstanding. (*Ibid*, S. 35.)

RICE LAND.

(*See Dams and Drains.*)

RIOTS AND ROUTS

What is a Riot.—A riot is described to be a tumultuous disturbance of the peace, by three persons or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same, in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. (1st. Russell, 247.)

Rout.—A rout is the disturbance of the peace, by persons assembling together, with intention to do a thing, which, if executed, will make them riotous, and actually making a motion towards the execution of their purpose. It agrees with a riot in every particular, except only, that it may be a complete offense without the execution of the intended enterprise.

1st.—Of the Violence.
2nd.—The Previous Concert.
3rd.—Of the Persons Concerned.
4th.—How Suppressed and Punished.

1st.—OF THE VIOLENCE.

The degree of violence or terror.—It seems to be clearly agreed, that in every riot there must be some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people; as the show of armor, threatening speeches, or turbulent gestures; for every such offense must be laid to be done in *terrorem populi*, but is not necessary, in order to constitute the crime, that personal violence should have been committed. (1st Russell, 248,)

The legalty or illegalty of the act intended to be done, not material if there be violence and tumult.—But if there be violence and tumult, it has been generally holden not to make any difference whether the act intended to be done by the persons assembled, be of itself lawful or unlawful; from whence it follows, that if three or more persons assist a man to make a forcible entry into lands, to which one of them has a good right of entry; or if the like number, in a violent and tumultuous manner, join together in removing a nuisance or other

thing, which may be lawfully done in a peaceable manner, they are as properly rioters as if the act intended to be done by them were ever so unlawful. And if in removing a nuisance, the persons assembled use any threatening words, (such as, they will do it if they die for it, or the like,) or in any other way behave in apparent disturbance of the peace, it seems to be a riot. (1st Russell, 249.)

Where three or more persons assemble together armed, with an intent mutually to assist one another, in an enterprise of a private nature, and afterwards execute the same in a threatening manner, it is a riot, whether the act done be lawful or not. (State vs Brooks, 1st Russell 361)

2ND.—THE PREVIOUS CONCERT

How far the violence and tumult must be premeditated.—But the violence and tumult must, in some degree, be premeditated. For, if a number of persons, being met together at a fair, market or any other lawful or innocent occasion, happen in a sudden quarrel to fall together by the ears, it seems to be agreed that they are not guilty of a riot, but only of a sudden affray, of which none are guilty but those who actually engage in it, because the design of their meeting was innocent and lawful, and the subsequent breach of the peace unexpectedly, without any previous intention But if there be any premeditated purpose of acting with violence and tumult, the conduct of the parties may be deemed riotous. As where it was held, that although the audience in a public theatre had a right to express the feelings excited at the moment by the performance, and in this manner to applaud or hiss any piece which is represented, or any performer who exhibits himself on the stage; yet if a number of persons, having come to the theatre with a premeditated purpose of interrupting the performance, and for this purpose make a great noise and disturbance, so as to render the actors entirely inaudible, though without offering personal violence to any individual or doing any injury to the house, they are guilty of a riot. (1st Russell, 250.)

If persons who have assembled for a lawful purpose, do afterwards associate together to commit an unlawful act, such association will be considered an assembling together for that purpose; so three or more patrolling may commit a riot. (State *vs.* Cole *et al.*, 2 McCord, 117.)

3RD.—OF THE PERSONS CONCERNED.

If any person seeing others actually engaged in a riot, joins himself to them and assists them therein, he is as much a rioter as if he had at first assembled with them for the same purpose, inasmuch as he had no pretence that he came innocently into the company, but appears to have joined himself to them with an intention of seconding them in the execution of their unlawful enterprise; and it would be endless, as well as

superfluous, to examine whether every particular person engaged in a riot were in truth one of the first assembly, or actually had a previous knowledge of the design. And the law is, that if any person encourages, or promotes, or takes any part in riots, whether by words, signs or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter; for in this case all are principals. It has been ruled, however, that if three or more, being lawfully assembled, quarrel, and the party fall on one of their own company, this is no riot; but that if it be on a stranger, the very moment the quarrel begins, they begin to be an unlawful assembly, and their concurrence is evidence of an evil intention in them that concur, so that it is a riot in them that act, and in no more. The inciting persons to assemble in a riotous manner, appears also to have been considered as an indictable offense. (1st Russell, 250.)

Where persons unknown, with the person indicted, were necessary to constitute the offense of a riot, they should be stated to be unknown, and so proved; if known, it should have been stated who they were. (State *vs.* Calder, 2 McCord, 462.)

4TH.—HOW SUPPRESSED AND PUNISHED.

The common law, and also several ancient Statutes, authorize proceedings for the restraining and suppression of riots. By the common law, the Sheriff, Under-Sheriff, Constable, or any other peace officer, may, and ought to do, all that in them lies, towards the suppression of a riot, and may command all other persons to assist them; and by the common law also any private person may lawfully endeavor to appease such disturbances, by staying the persons engaged from executing their purpose, and also by stopping others coming to join them. It has been holden also that private persons may arm themselves in order to suppress a riot; from whence it seems clearly to follow that they may also make use of arms in suppressing it, if there be a necessity. However, it may be very hazardous for private persons to proceed to these extremities; and such violent methods seem only proper against such riots as savor of rebellion. (1st Russell, 266.)

Punishment.—The punishment for offenses of the nature of riots, routs or unlawful assemblies, at common law, is fine and imprisonment, in proportion to the circumstances of the offense; and, formerly, in cases of great enormity, it appears, that the offenders were sometimes punished with the pillory. (1st Russell, 269.)

ROAD,

(*See Highway.*)

ROBBERY.

(*See Larceny.*)

ROOMS.

May be Broken Open where Gambling is Carried on.

(*See Gaming.*)

RULES.

(*See Courts of Trial Justices.*)

SALE.

Constables to give Fifteen Days' Notice of.

(*See Constable.*)

SEAMEN.

1ST.—HARBORING SEAMEN.
2ND.—IMPRESSING THEM.
3ND.—THEIR DEBTS AND GOODS.
4TH.—OF PROCURERS OF.
5TH.—OF DESERTERS.

1ST.—HARBORING SEAMEN.

No Tavern Keeper, etc., to Harbor Mariner more than one hour.—It shall not be lawful for any tavern keeper, punch house keeper or victualler, within this State, to harbor, entertain or employ any seaman or mariner exceeding one hour in four and twenty, without an order or direction in writing for so doing under the hand of the master or commander of the ship or vessel to which such seaman or mariner shall belong, under pain of forfeiting the sum of ten dollars for every such

offense, to be recovered by indictment in any Court of competent jurisdiction, and applied, one-half to the informer, and the other half for the use of the State: *Provided, always*, That nothing herein contained shall extend or be construed to extend to such seaman or mariner as shall be legally discharged from any ship or vessel. (Gen. Stat., Chap. LXXV, Sec. 14.)

Harboring Deserting Seamen and Enticing them to Desert.—Any person who shall be convicted of harboring deserting seamen, or of inveigling or procuring them to desert any service for which they have engaged, or disregard any articles into which they have entered, shall be held guilty of a misdemeanor, and, upon conviction, shall be punished by fine and imprisonment, at the discretion of the Judge, not to exceed three hundred dollars fine and three months imprisonment; and, upon a second conviction, the person so offending, if the keeper of a public or lodging house for seamen, in addition to the penalty before provided, shall forfeit his or her license. (*Ibid*, Sec. 15.)

Trial Justice may order Search for Deserted Seamen.—In case any such seamen, or any boy apprenticed on board any ship or vessel, shall be harbored, secreted or detained, it shall be lawful for any Trial Justice, upon complaint, on oath made by the master of the said ship, or on his behalf, to inquire into the matter, and if he shall see fit, by warrant under his hand and seal, to cause search to be made wherein the said seaman or apprentice may be harbored or secreted, and to cause such seaman or apprentice to be restored to the master of the said ship. (*Ibid*, S. 16.)

Last two Sections to extend to all Shipping Agreements.—The provisions of the two preceeding Sections shall extend to every agreement to proceed or continue on a voyage, made in this State or elsewhere, by a seaman, and whether in contemplation of a voyage to be commenced in this State or elsewhere. Provided, that the said agreement at the time when any such seaman may be harbored or secreted contrary to the provisions of said Sections, shall not have been fully executed and determined, but shall be of force and binding on such seaman, according to the laws of this State, or of the country where the same was entered into, or to which the ship or vessel in which such voyage was to be made may belong. (*Ib.*, S. 17.)

2d.—IMPRESSING SEAMEN.

Is a Misdemeanor.—Any attempt, by fraud or force, to ship, against his will, any person, as a seaman, on board any vessel in any port in this State, is hereby declared a misdemeanor, to be punished by fine and imprisonment, at the discretion of the Court. (Gen. Stat. C. CXXVIII, S. 14; *Ibid*, C. LXXV, S. 22.)

Where Evidence of Master of Vessel may be taken *de bene esse*.—When any prosecution shall be commenced against any person for impressing seamen, and, also under the provisions providing for the pun-

ishment of harboring seamen who have deserted and it shall appear to the Trial Justice before whom the prosecution was commenced, that the testimony of any master of a vessel or other transient person will be important on such trial, such Trial Justice shall have authority, after five days notice to the party accused, to summon such witness before some Judge of the Court of General Sessions, or the Recorder of the City Court of Charleston, to appear and give evidence in the said matter, when such witness shall be examined, with the right to the party accused to examine and cross-examine such witness, as in trials in open Court; and the Judge or Recorder shall certify and seal up such evidence, to be used in the trial of the cause, in the same manner as if the same had been given orally on such trial. Provided, that such testimony shall in no case be used unless it appear by the affidavit of the Trial Justice before whom such prosecution shall have been commenced, that such witness is not at the time of such trial within the jurisdiction of the State. (*Ibid*, S. 23.)

No traverse or continuance allowed without cause.—Defendants in cases of impressing seamen and in all cases in relation to harboring deserting seamen, shall be deprived of the right of traverse or continuance, without cause shown at the term of the Court where indictment is found, any law or usage to the contrary notwithstanding. (*Ib.*, S. 24.)

3D.—THEIR DEBTS AND GOODS.

Debts.—It shall not be lawful for any keeper of a public or lodging house for seamen, at any time, to recover from any seamen any debt exceeding one dollar; and no debt exceeding said sum, incurred by any seamen to any other person, shall be recoverable after he has signed an agreement to proceed on a voyage, until such voyage shall have been concluded. (*Ib.*, S. 18.)

If sick may be licensed by Trial Justice to receive credit.—If any mariners or seamen belonging to any vessel or vessels shall be visited with sickness, then it shall and may be lawful for any one Trial Justice, by an order under his hand, to license the master or mistress of any public house or ordinary, or any private house, to give him or them, being sick as aforesaid, credit for any sum or sums of money as the said master or mistress of any house is willing to trust for their necessary relief. (*Ib.*, S. 19.)

Of their goods.—It shall not be lawful for any keeper of a public or lodging house for seamen to withhold or detain any chest, bed, or bedding, clothes, tools, or other effects, of any seaman, for any debt alleged to have been contracted by such seaman; and, in case any such chest, bed, bedding, clothes, tools, or other effects, as aforesaid, shall be withheld or detained, contrary to this provision, it shall be lawful for any Trial Justice, upon complaint, upon oath, to be made by any such seaman, or on his behalf, to inquire into the matter, and, if he shall see fit, by warrant under his hand and seal, to cause any such property or

effects so withheld or detained, contrary to this Chapter, to be seized and delivered over to the seaman. (*Ib.*, S. 20.)

4TH.—PROCURERS OF.

Not to board vessels without permission of master.—It shall not be lawful for any broker, shipping master, or other person engaged in the business of procuring seamen for vessels, or furnishing them with such seamen, or making contracts for their services, to enter or attempt to go on board of any vessel lying at any port or any waters within the jurisdiction of this State, except as herein provided, without having previously obtained the permission of the master or other person having the care, custody, and control of such vessel, and any such person so entering any vessel, as aforesaid, without such permission, shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by fine and imprisonment at the discretion of the Judge who tries the case, not to exceed three hundred dollars and three months imprisonment (*Ib.*, S. 28.)

Master may arrest offender. It shall be lawful for the master or other person having the command of the said vessel, or the care, custody, and control of the same, to seize and arrest all persons while so offending, and to take them before any Trial Justice, to be committed or bound over to appear as in other cases of misdemeanor. (*Ib.*, S. 29.)

Burden of proof.—Upon the trial of any person indicted for entering or attempting to enter any vessel without permission, &c., in case it shall be proved that any such shall have entered or attempted to go on board of any vessel within the jurisdiction of the State, it shall be obligatory upon the person accused to prove that he had previously received the required permission, and, in default of such proof, such person shall be presumed to have entered without such permission, and be found guilty accordingly. (*Ib.*, S. 30.)

5TH.—OF DESERTERS.

Deserters May be Apprehended on Warrant.—If any seaman or mariner, who shall have signed a contract to perform a voyage, shall, at any port or place, desert or shall absent himself without leave of the master or officers commanding in the absence of the master, it shall be lawful for any justice of the peace, within the United States (upon the complaint of the master,) to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear, by due proof, that he has signed a contract within the intent and meaning of this Act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction, or common jail of the city, town or place, there to remain until the said ship or vessel

shall be ready to proceed on her voyage, or until the master shall require his discharge, and then to be delivered to the said master, he paying all the costs of such commitment, and deducting the same out of the wages due to such seaman or mariner. (1st S. L. U., S. 105, Sec. 7.)

Foreign Seamen Deserting.—On application of a consul or vice-consul of any foreign government, having a treaty with the United States, stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government, while in any port of the United States, and on proof by the register of the vessel, ship's roll, or other official document, that the person named belonged, at the time of desertion, to the crew of said vessel, it shall be the duty of any court, judge, justice or other magistrate having competent power, to issue warrants to cause the said person to be arrested for examination; and if on examination the facts stated are found to be true, the person arrested, not being a citizen of the United States, shall be delivered to the said consul or vice-consul, to be sent back to the dominions of any such government, or on the request, and at the expense of the said consul or vice-consul, shall be detained until the consul or vice-consul finds an opportunity to send him back to the dominions of any such government: *Provided*, nevertheless, that no person shall be detained more than two months after his arrest; but at the end of that time, shall be set at liberty, and shall not be again arrested for the same cause; and provided further, that if any such deserter shall be found to have committed any crime or offense, his surrender may be delayed until the tribunal before which the case shall be depending or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect. (4th S. L. U., S. 2169.)

SEARCH WARRANT.

(*See Seamen and Gaming.*)

1st.—For What it May be Issued and its Extent.
2d.—Of the Execution.
3d.—Of Proceedings on Return.
4th —Form of Warrant and Affidavit.

1st.—FOR WHAT IT MAY BE ISSUED, AND ITS EXTENT.

Only in Case of Stolen Goods.—A search warrant, at common law, may be issued, only in cases of stolen goods, and the practice, even to this extent, having crept into the law, is to be proceeded with great caution. In Entick's case, it was held that a warrant to search for the author of a seditious libel, and to seize and carry away his papers, was illegal and void. (2d State Trials, 321.)

Requests and Formalities.—In the same case, Lord Camden lays down the following rules:

1st.—There must be full charge upon oath, of a theft committed.

2d.—The owner must swear that the goods were lodged in such a place.

3d.—He must attend at the execution of the warrant, to show them to the officer, who must see that they answer the description. And lastly, the owner must abide the event at his peril; for if the goods are not found, he is a trespasser; and the officer being an innocent person will be a ready and convenient witness against him. (2d Hawkins, 135.)

Must not be General.—Though it has been usual for justices to grant general warrants, to search all suspected places for stolen goods, yet such practice is generally condemned by the best authorities. (4th Burns, 25.)

Lord Hale says, a general warrant to search for felonies or stolen goods is not good. And the same great author, in his 'PLEAS OF THE CROWN,' thus expresses himself; "I do take it, that a general warrant, to search in all suspected places, is not good; but only to search in such particular places, where the party assigns before the justice his suspicion, and the probable cause thereof; for these warrants are judicial acts, and must be granted upon examination of the fact. (*Ibid*, 26.)

Mr. Hawkins says, he does not find any good authority that a justice can justify sending a general warrant, to search all suspected houses in general for stolen goods; because such warrant seems to be illegal on the very face of it; for it would be extremely hard to leave it to the discretion of a common officer to arrest what person, and search what houses he thinks fit; and if a justice cannot legally grant a *blank warrant* for the arrest of a single person, leaving it the party to fill up, surely he cannot grant such *general warrant*, which might have the effect of an hundred blank warrants. (*I bid.*)

Not Granted on Surmise.—A justice cannot upon a *bare surmise*, make a warrant to break any man's house, to search for a felon, or for stolen goods; for the justices being created by the Act of Parliament, have no such authority by any Act of Parliament; and it would be full of inconvenience, that it should be in the power of any justice of the peace, being a judge of record, upon a bare suggestion, to break the house of any person, of what degree soever, either in the day or night, upon such surmises. *Ibid.*)

May on Oath of Probable Cause.—But on a complaint, and oath made, of goods stolen, and that the party suspects they are in such a house, and shows the cause of his suspicion, the justices may grant a warrant to search in the suspected place mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them, and further to abide such order, as to law shall appertain. (*Ibid.*)

2D.—OF THE EXECUTION.

Should be in the Day Time.—A search warrant, according to Lord Hale, should require the search to be made in the day time; and, though he does not absolutely declare that it is unlawful without such restriction, yet he says they are very inconvenient without it; for many times, under pretence of searches made in the night, robberies and burglaries have been committed; and at best, it creates great disturbances. (4th Burns, 26.)

In Case of Positive Proof.—Yet, in case of positive proof, it is proper to execute the warrant in the night time, lest the offender and goods should be gone before morning. (*Ibid*, 27.)

Whether the stolen goods are in a suspected house or not, the officer and his assistants may enter in the day time, the doors being open, to make search, and it is justifiable by the warrant. (*Ibid.*)

Officer may Break Open Doors.—If the door be shut, and on demand, if refused to be opened by those within, the officer may break open the door, if the stolen goods are there; and if they are not there, the officer seems indemnified because he searched by warrant, and could not know whether the goods were there until search made, but it seems that the party who made the suggestion is punishable in this case. (*Ibid.*)

3D.—OF PROCEEDINGS ON RETURN.

Goods, How Disposed of.—On return of the warrant executed, the following objects ought to be attended to by the justice; with respect to the goods brought before him, if it shall appear that they were not stolen, they are to be restored to the possessor; if it shall seem clear that they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the sheriff or constable, that the party robbed may proceed by indicting and convicting the offender, to have restitution. (4th Burns, 27.)

Person, How Disposed of.—With regard to the person who had the custody of the goods, if they were not stolen, he is to be discharged; if stolen, though not by him, but by another, who sold or delivered them to him, and it shall appear that he was ignorant of their having been stolen, he may be discharged as an offender, and bound over to give evidence as a witness against the person who sold them; if it shall appear that he knew they were stolen, he must be committed, or bound over to answer the felony. (*Ibid.*)

4TH.—FORMS.

FORM NO. 161.—AFFIDAVIT AND SEARCH WARRANT.

THE STATE OF SOUTH CAROLINA, } *Search Warrant.*
COUNTY OF ——

C. D., being duly sworn, doth depose and say, that on the———day of ———A. D. 18——at ——— in the said County, was stolen and embez-

zled from (*here state what was stolen and all particulars,*) the personal property of (*state of whom,*) and this deponent suspects that the said property has been stolen by E. F., and that the same or part thereof, is now concealed in (*state where*) in the said County, wherefore process is applied for to search for the same.

C. D.

Sworn to before me this ——day of ——A. D. 18——.

A. B.,
Trial Justice

THE STATE OF SOUTH CAROLINA, } *ss.*
COUNTY OF ———. }

To any Lawful Constable of the County of —— Greeting:

Whereas, complaint on oath has been made to me A. B., one of the Trial Justices said County by C. D., of ——— in the County aforesaid, that certain personal property, viz: (*Mention the property,*) have lately been stolen or embezzled out of the ——, in the said County by some person or persons to him unknown, and that he suspects that the said property is concealed in (*state where.*)

Therefore the State of South Carolina commands you to search the place where the said property is suspected to be concealed, in the day time, and that you bring the same before me.

Given under my hand the —— day of —— A. D. 18—.

A. B.,
Trial Justice.

SELLING SPIRITS.

(*See Retailing.*)

SELF DEFENSE.

(*See Homicide.*)

SERVANTS.

(*See Lands and Tenements.*)

SHOOTING.

(*See Assault.*)

SHOWS.

(*See Plays and Shows.*)

SIGNALS.

(*See Malicious Mischief.*)

STABLES.

(*See Arson.*)

STAVES AND SHINGLES.

Size of Pipe Staves, etc.—All staves to be made for exportation, and all shingles which shall be offered for sale in this State, shall be made of good and sound timber and shall be of the following dimensions, to wit: Each pipe stave to be made of white oak, fifty-eight inches long, and not less than three quarters of an inch thick at the thin edge, and three inches broad, clear of sap; each hogshead stave to be made of red or white oak, forty-two inches long, not to be less than three quarters of an inch thick at the thin edge, and four inches broad, clear of sap; and each barrel stave, of red or white oak, to be thirty inches long, not to be less than half an inch thick at the thin edge, and four inches broad, clear of sap; and each shingle to be twenty-two inches in length, and not less than half an inch thick at the thick end, and well staved, so as not to be winding, and not less than three inches and a half broad, clear of sap. (Gen. Stat C. LI, S. 36.)

STEALING LIVE STOCK.

(*See Larceny.*)

STOLEN GOODS.

(*See Receiving Stolen Goods and Restitution of.*)

SUMMONS.

(*See Courts of Trial Justices.*)

SUNDAY.

1st.—Service of Process, and Delivery of Verdict on.
2nd.—Excluded in Computation of Time, When.
3rd.—Observance of.

1st.—SERVICE OF PROCESS, AND DELIVERY OF VERDICT ON.

Service of Process on.—No civil or criminal process shall be served on Sunday, except for treason, felony or breach of the peace. (Gen. Stat. C. XX, S. 22.)

Delivery of Verdict on.—If a verdict is delivered in, on Sunday morning, after the expiration of the twelfth hour, it is void, and will be a good ground for a new trial, agreeable to the common law maxim, *dies dominicus, non est dies juridicus.* (Shaw vs McCombs; 2 Bay, 232.)

2d.—IN COMPUTATION OF TIME, WHEN EXCLUDED

The time within which an Act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded. (Code, S. 422.)

3d.—OBSERVANCE OF.

Penalty for Working on Sunday.—No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business work of their ordinary callings upon the Lord's Day (commonly called the Sabbath), or any part thereof (works of necessity or charity only excepted), and every person being of the age of fifteen years or upwards, offending in the premises shall, for every such offense, forfeit the sum of one dollar. (Gen. Stat. C, LXXIV, S. 1.)

For Selling Goods.—No person or persons whatsoever shall publicly cry, show forth, or expose to sale any wares, merchandise, fruit, herbs, goods or chattels whatsoever, upon the Lord's Day, or any part thereof, upon pain that every person offending shall forfeit the same goods so cried, or exposed to sale. (*Ibid*, S. 2.)

No Sports or Pastimes Allowed Sunday.—No public sports or pastimes, as bear-baiting, bull-baiting, foot-ball playing, horse racing, interludes or common plays, or other games, exercises, sports or pastimes whatever, shall be used on the Lord's Day by any person or per-

sons whatsoever; and every person or persons offending in the premises shall forfeit for every offense the sum of one dollar. (*Ibid*, S. 3.)

Persons to Attend Meeting—All and every person and persons whatsoever shall, on every Lord's Day, apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and, having no reasonable and lawful excuse, on every Lord's Day shall resort to some meeting or assembly of religious worship, tolerated and allowed by the laws of this State, and shall there abide, orderly and soberly, during the time of prayer and preaching, on pain and forfeiture, for every neglect, of the sum of one dollar. (*Ibid*, S. 4.)

No Person to Travel on Sunday.——No drover, wagoner, butcher, higgler, or any of their servants, or any other traveler or person whatsoever, shall travel on the Lord's Day, by land; neither shall any person or persons whatsoever, travel on the Lord's Day by water in any barge, lighter wherry, boat, canoe, or periauger, excepting it be to go to the place of religious worship and return again, or to visit or relieve any sick person, or unless the person or persons were belated the night before, and then to travel no further than to some convenient inn or place of shelter for that day, or upon some extraordinary occasion, for which he, she, or they shall be allowed to travel under the hand of some Trial Justice. (*Ibid*, Sec. 5.)

No Public House to Entertain Guests on Sunday, except Strangers and Lodgers.—No vinter, inn-holder, or other person keeping any house of public entertainment, shall entertain or suffer any person or persons whatsoever, excepting strangers or lodgers in such houses, to abide or remain in their houses or out houses, yards, or orchards or fields, drinking or idly spending their time on the Lord's Day, upon the pains and penalties of one dollar for every person offending, payable by them, respectively, that shall be found so drinking or abiding in any such public house or dependencies, and the like sum of one dollar to be paid by the keeper of such house for every person entertained by him. (*Ibid*, Sec. 6.)

No Servant to Work on Sunday.—If any master, mistress, or overseer, shall command and cause and encourage any servant to work on the Lord's Day, he she, or they, shall forfeit for every such offense, the sum of one dollar. (*Ibid*, Sec. 7.)

For the better execution of all and every, the foregoing provisions, every Trial Justice within his County, shall have power and authority to summon before him, any person or persons whatsoever, who shall offend in any of the particulars before mentioned, and upon his own view, or confession of the party, or proof of any one or more witnesses, upon oath, the said Trial Justice shall give a warrant, under his seal, to seize the said goods cried, showed forth, or put to sale as aforesaid, and to sell the same; and also the other penalties and forfeitures, to impose the fine and penalty for the same, and levy the said forfeitures and pen-

alties by way of distress, and sale of the goods of every such offender, returning the overplus, if any be, after charges allowed for the distress and sale. (*Ibid*, Sec. 8.)

Disposition of Forfeitures and Penalties.—All and singular the forfeitures or penalties aforesaid, shall be employed and converted to the use of the poor of the County, where the said offenses shall be committed, and to deliver into the hands of the County Commissioners for that end, saving only that it shall and may be lawful to, and for any such Trial Justice, out of the said forfeitures or penalties, to reward any person or persons who shall inform of any offense against this chapter, according to his or their directions, so as that such reward exceed not the third part of the forfeitures or penalties. (*Ibid*, Sec. 9.)

Dressing Meat and Selling Milk, not Prohibited.—Nothing in the above provisions shall extend to the prohibiting of dressing meat in families, or dressing or selling of meat in inns victualing houses or other public houses, for such as cannot be otherwise provided; nor to the buying and selling of milk before nine o'clock in the morning, or after four o'clock in the afternoon. (*Ibid*, Sec. 10.)

Offense to be Prosecuted Within Ten Days.—No person or persons to be prosecuted or molested for any offense before mentioned in this chapter, unless he or they be prosecuted for the same within ten days after the offense committed. (*Ibid*, Sec. 11.)

Whoever shall keep, or suffer to be kept, any gaming table, or permit any game or games to be played in his, her or their houses, on Sullivan's Island on the Sabbath day, such person or persons, on conviction thereof, before any Court having jurisdiction, shall be fined in the sum of fifty dollars, to be sued for on behalf of, and to be recovered for the use of the State. (Gen. Stat., C. CXXXIII, Sec. 5, p. 736.)

It shall be unlawful for any railroad corporation to load or run any train on any of the railroads of this State on Sunday, except such trains as convey the United States mail. And for each violation of this Act, the railroad company offending, shall forfeit to the State not less than five hundred dollars, to be collected in any Court of competent jurisdiction. (17 Stat., 42.)

SURETY FOR THE PEACE.

(*See Behavior.*)

SWEARING.

(*See Profane Swearing.*)

SWINDLING.

(*See Cheats.*)

TAR, PITCH AND ROSIN.

Casks and Barrels to be Branded. &c.—Every person who shall sell or expose for sale, in any part of this State, pitch, tar, rosin, turpentine, beef or pork, in any casks or barrels, shall first set on every such cask or barrel, a burnt mark, with the first letter of the Christian name, and the surname at length, of the maker of such commodity, with an iron brand.

Penalty for Failure.—And if any person shall, in any port or place of exportation within this State, sell or expose to sale, any of the said commodities hereinbefore enumerated, on any cask or barrel, before the same be marked and branded as aforesaid, every such person shall, for every such cask or barrel, forfeit the sum of two dollars to the person or persons who will inform and sue for the same, to be recovered before any Trial Justice. (Gen. Stat., 302, Sec. 27.)

Penalty for Exporting Without Brand.—If any merchant, factor, trader or other person, shall ship, or put on board any ship or vessel, any of the said commodities hereinbefore enumerated, in any casks or barrels, with intent to export the same before such casks or barrels be marked or branded as aforesaid, every such merchant, factor, trader, or other person, shall forfeit the sum of two dollars for every such cask or barrel, to be sued for, recovered and disposed of in manner aforesaid. (*Ibid*, Sec. 28.)

Barrels may be Opened by Purchasers where Fraud is Suspected, &c.—If any fraud or abuse is suspected in any barrel or barrels of pitch or rosin, which shall be brought to market or exposed to sale, the person who shall treat for the purchase of such pitch or rosin, shall be at liberty to cut open as many barrels of the same as he shall think proper, which shall be liable to be viewed, judged and forfeited, as is directed in the case of rice, and where any pitch or rosin shall be condemed as fraudulent by the person or persons empowered, (as is directed with respect to rice,) to view and judge the same. All such condemned pitch and rosin shall be forfeited and sold by the State Treasurer, and applied to such uses as is directed in the case of rice. (*Ibid*, Sec. 29.)

To be Done at their Risk.—Where any pitch or rosin shall be ordered to be cut open as aforesaid, without the consent of the owner or person offering or exposing the same for sale, the same shall be done at the risk of the person who shall cause such pitch to be so cut open, that is to say, if such pitch or rosin shall not be condemned as fraudulent by

the person or persons empowered to view and judge the same, then the person who caused the said pitch or rosin to be so cut open and examined, shall take to himself every such barrel so cut open, and which shall not be condemned as aforesaid, and shall pay to the owner or person offering the same to sale, the current sum or price which good pitch or rosin shall then be at, at that port or place, anything hereinbefore to the contrary notwithstanding. (*Ibid*, Sec. 30.)

TAVERN.

(*See Inn.*)

TENDER.

A tender is an offer to pay a debt or perform a duty. (Bac. Ab. Tit., Tender.)

1st.—What is a Good and Legal Tender.
2d.—Of the Time and Place of Making it.
3d.—Of the Consequences of a Tender.

1st.—WHAT IS A GOOD AND LEGAL TENDER.

Gold and Silver.—By the Constitution of the United States, Article 1st, Sec. 10.

Copper Not.—No State shall make anything but gold and silver coin a tender in payment of debts; under which it hath been ruled, that the copper coin of the United States is not a legal tender.

Bank Notes.—But an offer in bank notes, of money due, may be a good legal tender, if no objection is made to it on that account, and it be refused on some other ground. (Polglasse *vs.* Oliver, 1st Price, 133; Wright *vs.* Read, 3 T. R., 554.)

Must be an Actual Tender.—It is not enough for the person who intends to make a tender, to say I am ready to pay the debt, or perform the duty; but he must make an actual offer to pay the one or perform the other. The mortgagor said to the mortgagee, I am here ready to pay you the money due upon the mortgage; but at the same time kept the money, which was in a bag, under his arm. This was holden not to be a good tender. But an actual offer of money in a bag is a good tender, provided it be proved that the sum intended to be tendered, was in the bag; for it is usual to carry money in a bag, and it is the duty of the party who receives it, to tell it, and to examine whether it be good. (5th Bac. Ab., 4.)

Must be Certain and Unconditional.—It is a general rule that a tender must be made unconditional, and must be always of a certain and definite character. (Eastland *vs.* Longshorn & Maxwell, 1 N. and Mc., 194.(

A party making a tender, is not entitled to require a receipt in full, where a larger sum than that tendered is claimed to be due; and where a receipt *pro tanto* was offered and refused, and a receipt in full insisted upon as a condition, held that the tender was void. (Seter & Price *vs.* Robinson, 2d Bailey, 274.

A tender of a larger sum requiring change, is not a good tender. (Robinson *vs.* Cook, 6 Taun., 336)

2d.—OF THE TIME AND PLACE.

A tender cannot be made after the commencement of an action. The way to stop proceedings after an action is brought, is by obtaining a rule for leave to pay the money into Court. (Fishburn, Ex'r, *vs.* Sanders, 1st N. and Mc., 242.)

To save costs, it is too late to tender money after a writ has been taken out, and signed and sealed by the clerk, although it has not been lodged with the Sheriff

The plaintiff has already incurred the costs, and if the defendant admits the debt, he must pay the costs accrued. But the defendant having paid the money into Court, which was taken out by the plaintiff, except so much as would pay the costs, it was he'd, that the plaintiff's accepting the money, discharged the defendant from payment of costs. Where the defendant gets the leave of Court, after action brought to pay money into Court, it is always upon condition, that he pay the costs then due. (Hinchie *vs.* Foster, 4th McC., 253.)

Defendant, after issue joined, by leave, paid money into court Plaintiff took the money out, and without requiring the defendant to pay the cost up to time the money was paid into Court proceeded for the balance of his demand. Verdict for defendant. New trial ordered unless the defendant pay all costs up to the time he paid the money into Court. (Broughton *vs.* Richardson, 2nd Rich., 64)

Where time and place are fixed.—Where money is to be paid, or goods are to be delivered, at a place certain, upon or before a day certain, the tender must not only be made upon the last day limited for the payment or delivery, but it also must be made at the uttermost convient time of that day to pay the money, or deliver the goods, it would be unreasonable that the other should be obliged to attend for the recovering of the money or goods before that time. (5th Bac., Ab , 9.)

But although the party, who ought to pay money, or deliver goods, has until the uttermost convient time of the last day, limited for the payment or delivery, to pay the money or deliver the goods, a tender is not good, unless there be, after it is made, time enough, before the sun

sets, to examine and tell the money, or to examine and take account of the goods; for if a man should be compelled to receive either money or goods in the dark, there would be great danger of his being imposed upon. (*Ibid.*)

Notwithstanding the law gives the uttermost convenient time of the last day, limited for the payment of money or delivery of goods, to pay the money or deliver the goods, yet, as this is solely for the convenience of both parties, that neither may be obliged to give longer attendance than is necessary, if it happen that both parties meet at the place at any other time of the last day, or upon any other day within the time limited for the payment or delivery, and a tender be made, the tender is good. (*Ibid.*)

If money is to be paid, or goods are to be delivered, at a place certain notice, although no time be fixed for the payment or delivery, may be given to the party to whom the payment or deliveing is to be made. That the money will be paid, or the goods delivered, upon a day therein mentioned; and a tender at the uttermost convenient time of that day is good. (5 Bac. Ab., 10.)

If no Place be Appointed.—If no place be appointed for the payment of money in gross, a tender must, if the person to whom the money is due be in the State, be made at the place where he is; but if he be out of the State, the party, who ought to pay the money, is not bound to go out of the State to seek him. (5 Bac., Ab , 6.)

If no place be appointed for the payment of rent issuing out of land, a tender upon the land is good; for it is not in this case necessary to make a tender to the person. But although a tender to the person be not, in the case of rent issuing out of land, necessary, a tender to the person would, in such case, be good. (*Ibid*, 7.)

Replevin lies to recover damages for the detainer after tender of the rent in arrear, if the tender were made before the goods were impounded, although not made until after the distress levied. (Hilson vs. Blain, 2d Bailey, 168.)

Tender *on the land*, to the bailiff, if the landlord is not present to receive the rent in arrear, renders the subsequent impounding of the goods distrained tortuous; and the landlord is liable for the damages. (*Ibid.*)

3rd.—OF THE CONSEQUENCES OF A TENDER.

Stops Interest and Costs.—Tender, in paper currency, before it went out of circulation, is good, and shall stop interest from the time of such tender. (Petrie *vs.* Smith, 1st Bay, 115.)

In case of the tender of money, it discharges the subsequent interest and costs. (12 J. R., 274). And where the defendant, after action brought, and before declaration, has tendered the sum which he afterwards brings into Court, and offered to pay costs up to that time, it seems to be reasonable that he should not be liable to the payment of further costs. (1st Tidd's Prac., 567.)

Admits a Debt.—Bringing money into Court is an acknowledgement of the right of action, to the amount of the sum brought in; and therefore the plaintiff, on producing an office copy of the rule, is entitled to receive it at all events, whether he proceed in the action or not; and even though he be non-suited or have a verdict against him. And being an acknowledgement on record, the party can never recover it back again, though it afterwards appear that he paid it wrongfully. But bringing money into Court, is admission of a legal demand only. And beyond the amount of the sum brought in, it is no acknowledgement of the right of action; and therefore, if the plaintiff proceed further, it is at his peril. (*Ibid.*)

Effect of Subsequent Demand.—A right to damages, on the account of the non-payment of a debt, or the non-performance of a duty, may, after being taken away by a tender and refusal, be restored by a demand subsequent to the tender and refusal; for if the debt or duty be not discharged by the tender and refusal, a new right to damages acrues, from the non-payment or the non-performance upon the subsequent demand. If A. have tendered a sum of money to B., and B. have refused to accept thereof; yet, if a demand be afterwards made by B., and the money be not paid, A. is liable to damages for non-payment from the time of the demand. (5th Bac. Ab., 13.)

TRANSCRIPT OF JUDGMENT.

(*See Courts of Trial Justices.*)

TRESPASS.

(*See Lands and Tenements and Malicious Mischief.*)

TREASON.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. (Con. U. S. Art, 3, S. 3.)

1ST.—WHAT AMOUNTS TO.
2ND.—EVIDENCE OF.
3RD.—PUNISHMENT.

1ST.—WHAT AMOUNTS TO.

To constitute treason, war must be actually levied against the United States. A mere conspiracy to subvert by force, the government of the country, is not treason. (*Ex parte* Bollman & Swartwout, 4th Cranch, U. S. Rep., 126.)

To constitute a levying of war, there must be an assemblage of persons, designed to effect by force a treasonable purpose. The mere enlistment of men for such a purpose is not sufficient. (*Ib.*)

It is high treason to prevent the execution of an Act of Congress, by force and intimidation. (U. S. *vs.* Mitchell, 2d Dall. Penn. Rep., 355.)

But a resistance of the execution of a law of the United States, accompanied with any degree of force, if for a private purpose, is not treason. To constitute that offense, the object of the resistance must be of a public and general character. (U. S. *vs.* Hoxie, 1 Paine's U. S. C. C., Rep., 265.)

Enlisting or procuring any person to be enlisted, in the service of the enemy, is treason. Nothing will excuse the act of joining an enemy but the fear of immediate death; not the fear of any inferior personal injury, nor the apprehension of any outrage upon property. (Respublica *vs.* McCarty, 2d Dall. Penn. Rep., 87.)

2ND.—OF THE EVIDENCE.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt Act, or on confession in open Court. (Const. U. S., Art. 3, S. 3.)

Overt act of treason must be proved by two witnesses, or by the confession of the party in open Court. (1 Burr's Trial, 13, 14; 8th Am. Con. L., 173.)

And if the overt act laid in the indictment is not proved by two witnesses, no testimony, in its nature corroborative or confirmatory, is admissable. (*Ibid.*)

After an overt act is proved to have been committed in the County where the indictment is laid, evdence may be given of an overt act committed in another County. (Respublica *vs.* Malin, 1 Dall. Penn. Rep., 35.)

Where the person, in an indictment for high treason, has joined a party of American troops, supposing them to be British, it was held, that no evidence of words showing his mistake, and that it was his real intention to join the enemy, could be admitted. (*Ibid.*)

3D.—PUNISHMENT.

The punishment of high treason by the common law, as stated by Mr. Justice Blackstone, is as follows:

1st.—That the offender be drawn to the gallows, and not be carried or walked, though usually, (by connivance, at length ripened by humanity into law,) a sledge or hurdle is allowed, to preserve the offender from the extreme torment of being dragged on the ground or pavement.

2d—That he be hanged by the neck, and then be cut down alive.

3d—That his entrails be taken out, and burned whilst he is yet alive.

4th.—That his head be cut off.

5th—That his head and quarters be at the disposal of the king. (4th Bl. Com., 92.)

But by Cons. U. S., Art. 3, Sec. 3, Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attained. Under which power it was enacted, (1st S. L., U. S., 83,) 1st, that if any person or persons, owing allegiance to the United States of America, shall war against them, or shall adhere to their enemies, giving them aid and comfort within the United States, or elsewhere, and shall be thereof convicted, on confession in open Court, or on the testimony of two witnesses to the same overt act of the treason, whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death.

TRIAL JUSTICES.

1st.—Their Appointment, Number, Qualification and Removal.
2d.—Their Duties, Powers, &c. (*See Arrest and Bail, Attachment, Courts of Trial Justices, Inquests, Habeas Corpus, Jurisdiction, Concealed Weapons, &c.*)
3d.—Their Disabilities and Liabilities. (*See Negligence and Officers.*)
4th—Mere Indemnity and Protection.

1st.—THEIR APPOINTMENT.

Governor to Appoint.—The Governor by and with the advice and consent of the Senate, shall from time to time, appoint and commission in the several Counties of the State, a suitable number of Trial Justices. (Gen. Stat., C XXV., S. 1.)

Number.—By A. A. 1878, No. 543, it is enacted that "Trial Justices in the several Counties of the State shall be distributed as the convenience of the several counties shall require, and the number in commission shall not exceed: In Abbeville, fifteen; Aiken, fifteen; Barnwell, seven; including the one who shall keep his office at Williston; Beaufort, ten; Charleston, thirty-two; of the Trial Justices for Charleston County, six shall reside and keep their offices in the City of Charleston; of these, two shall be judicial Trial Justices, who shall hold their Courts in some convenient public place at least twice in each week, and as often as may be necessary, dividing between themselves, the days during which such Courts be held: The remaining four shall be ministerial Justices. The Judicial Justices shall have jurisdiction to hear and determine all causes properly brought before them, when the defendant or a majority of the defendants reside in the city, but shall not have authority to practice in the Trial Justices Courts. Also, all cases of landlord and tenant, and all cases respecting the unlawful holding of lands, tenements or hereditaments, arising in said city, which under the

laws of this State may be heard and determined by a Trial Justice or Justices, shall be heard and determined in said Court only.

The Ministerial Trial Justices may bring all actions triable in the Trial Justices' Courts, who shall not hear and determine any cases whatsoever. The Governor shall designate, as soon after the passage of the Act as may be practicable, which of the six Justices for the city of Charleston shall be Judicial and which Ministerial Justices.

The Judicial Trial Justices shall receive a salary of nine hundred dollars per annum each, and the Ministerial Trial Justices a salary of seven hundred dollars per annum, to be paid as now provided by law. Nothing herein contained shall interfere with the jurisdiction of any of the Trial Justices to issue warrants in criminal cases, triable in the Courts of General Sessions. The Judicial Trial Justices, in addition to the costs now allowed by law, shall charge a docket fee of two dollars for each civil case tried in the Trial Justice's Courts, which docket fee when collected, shall be paid by them to the Treasurer of Charleston County; Chester, eleven, including the one at Blackstock; Chesterfield, eight; Clarendon, three; Colleton, ten; Darlington, seven; Edgefield, fifteen; Fairfield, nine; Georgetown, seven; Greenville, fourteen; Horry, nine; Kershaw, nine; Lancaster, ten; Laurens, ten; Lexington, thirteen, one to reside at Batesburg and one at the Saluda Factory; Marion, twelve; Marlboro, eight; Newberry, twelve; Oconee, nine; Orangeburg, twelve; Pickens, eight; Richland, ten, one at each of the following places: Acton, Adams' Cut, Camp Ground, Killian's, Davis's, Garner's, Gadsden, Hopkins', and two for the city of Columbia; Spartanburg, fifteen; Sumter, ten, one at Mayesville and one at Bishopville; Union, twelve; Williamsburg, ten; York, twelve.

Term of Office.—Trial Justices shall be commissioned and hold their offices for the term of two years, unless sooner removed by the Governor.

Change of Domicile.—If a Trial Justice changes his domicile, and removes therefrom the distance of three miles, his authority and jurisdiction as such Justice shall thereupon cease, and another Trial Justice may be designated and appointed in his place. (Gen. Stat., 194, Sec. 3; 16 Stat., 683: 17 Stat., 17; *Ibid*, 353; *Ibid*, 332, 337, 358, 456, 519.)

Governor may Suspend for Cause.—The Governor is authorized to suspend from his office, for such causes as to him shall seem just, any Trial Justice, and to designate another person to perform the duties of such suspended officer, (who, in turn, may be removed and another designated,) and he shall report such suspension to the Senate, together with the name of the person designated by him to perform the duties of such suspended officer; and if the Senate confirms the person so designated, the officer suspended shall be regarded as removed, and the vacancy duly filled; but if the Senate refuse to confirm him, the suspended officer shall be restored to his office. (*Ibid*, Sec 4.)

Governor may Appoint during Vacation subject to Approval of Senate.—During the vacation of the Senate, the Governor is authorized to appoint Trial Justices, subject to the approval of the Senate, to act, unless sooner removed by him, till the end of the next session. If not approved by the Senate, said appointment shall cease at the end of the said session. (*Ibid*, Sec. 5.)

Oath of Office.—On receiving such commission, and before entering on the duties of their offices, such Trial Justices shall take and subscribe before the Clerk of the Court of their respective Counties, the following oath:

"I do solemnly swear, (or affirm as the case may be,) that I am duly qualified, according to the Constitution of the United States and of this State, to exercise the duties of the office to which I have been appointed, and that I will faithfully discharge, to the best of my abilities, the duties thereof; that I recognize the supremacy of the Constitution and Laws of the United States, over the Constitution and Laws of any State; and that I will support, protect and defend the Constitution of the United States and Constitution of South Carolina, as ratified by the people on the sixteenth day of April, 1868, *So Help Me God*."

And to file the same in the Clerk's office, unless in such Counties where such Clerks may not be qualified according to law; and in such cases, the said oath shall be administered by any officer authorized to administer oaths in the County where such Trial Justice may be appointed; and such oath so administered, shall be filed in the office of Secretary of State. (*Ibid*, Sec. 6.)

The acts of one appointed a Magistrate, but who has not qualified according to law, are void. (State *vs.* Hayward, 1st N. and McC., 546.)

2d.—THEIR DUTIES, &C.

(1.)—General Powers and Duties.
(2.)—Practice of Trial Justice Courts in the city of Charleston.

(1.)—*General Powers and Duties.*—Every Trial Justice shall have power to administer any oath authorized or required by law to be taken, and not directed to be administered by another authority; and any oath so administered, shall, to all intents and purposes, be binding and effectual in law. (Gen. Stat., C. XXV, Sec. 35, p. 201.)

To Keep Record Books for Civil and Criminal Cases.—Each Trial Justice shall keep two books, the one for civil, the other for criminal cases, wherein he shall insert all his proceedings in each case by its title, showing the commencement, progress and termination thereof, as well as all fees charged or received by him; and shall produce the same when required, for the inspection of the Solicitor of the Circuit; and at the expiration of his term of office, he shall deposit the same in the Clerk's office for the County for which he is appointed. (*Ibid*, Sec. 41.)

To Return all Papers Pertaining to the Court of Sessions to the Clerk.—All papers pertaining to the Court of Sessions shall be returned by each Trial Justice to the Clerk, at least ten days before the ensuing term of the said Court, except such as may have been issued or received by him subsequent to that time, which shall be returned on the first day of the term, under the penalties prescribed, (*see Fees,*) and every such paper shall be of a size not less than half a sheet of foolscap, folded in the manner that writs are when issued, and shall be endorsed legibly with the title of the case, nature of the offense, kind of proceeding, and the Trial Justice's name. (*Ibid*, Sec. 42.)

To Report Monthly to County Auditor.—All Trial Justices are required, on the first Wednesday in every month, or within ten days thereafter, to make, in writing, to the respective Auditors and Treasurers of their several Counties, a full and accurate statement of all monies collected by them on account of licenses, fines, penalties or forfeitures, during the past month; and in default thereof, upon conviction thereof, shall be liable to a fine not exceeding one hundred dollars, or imprisonment in the common jail, not exceeding two months, or both, at the discretion of the Court. (16 Stat., 763.)

Courts to be Held on Certain Days.—(2.)—*Practice of the Trial Justice Courts in the city of Charleston.*—Courts of Trial Justices shall be held by one, at least, of the Judicial Trial Justices, on every day of the week, except Monday, Saturday, and Sunday, and may be held on any day but Sunday, at a place to be provided by the County Commissioners of Charleston County. (16 Stat., 684, Sec. 1.)

All summons and other process for the Courts of Trial Justice in civil cases, shall be issued exclusively by one of the Ministerial Trial Justices. (*Ibid*, Sec. 2.)

Party to be Entitled to a Jury.—Any party in any cause in said Court, civil or criminal, shall be entitled to a jury, if he demand one, previous to the trial, to be drawn by the presiding Justice, and in the mode provided by law governing the drawing of juries in Trial Justice's Courts. (*Ibid*, Sec. 3.)

In all cases in which the State is a party, the trial before the Trial Justice Court shall be conducted, and the State represented by a Ministerial Trial Justice, unless the Solicitor of the Circuit be in charge of such case. (*Ibid*, Sec. 4.

Judicial Trial Justices to Make Report to Presiding Judge.—It shall be the duty of the Judicial Trial Justices, on the first day of each term of the Court of General Sessions of Charleston County, to report in writing, under their hands and seals, to the Presiding Judge of said Court:

First. The number of Ministerial Trial Justices in the said City of Charleston.

Second. The number of cases, civil and criminal, brought by each of them in their Courts.

Third. The number of days on which, during said interval, the Court has had its session.

Fourth. The amounts of fines imposed in said Courts, and the names of the persons fined.

Fifth. The number and names of the cases on which the docket fee has been imposed, and those in which it has been paid. (*Ibid*, Sec. 5.)

Contempt of Court to be Punished by Fine and Imprisonment.—The said Courts of Trial Justices shall have full power and authority to punish for contempt of said Courts, committed during the session thereof, and if in the presence of said Court, and for such contempt to impose punishment by fine and imprisonment, either or both: *Provided*, such fine shall not exceed twenty dollars, or such imprisonment exceed twenty-four hours: *Provided, also*, That no such contempt shall be punished except upon and after hearing a rule to show cause, served personally upon the person charged therewith, said rule to be returnable not less than twenty-four hours from the service thereof. (*Ibid*, Sec. 6.)

Appeals Allowed.—Appeals shall be from the said Courts of Trial Justice in all cases now allowed by law for appeal from the ordinary Trial Justices' Courts, to be prosecuted in the same manner and under the same regulations as therein prescribed. (*Ibid*, Sec. 7.)

Mode of Entering Judgment.—All judgments in the said Courts shall be entered as follows: The Clerk of said Court shall make up a judgment roll, consisting in each case of the warrant or summons and finding of the Court, and shall enter the same in a book kept by him for that purpose, specifying the name of the plaintiff, the name of the defendant, the amount of the fine or verdict, and the amount of the costs, with the date of the entry; said judgment roll to be made up and entered within twenty-four hours after the verdict is found, and shall be signed by the Presiding Justice. For his services in entering up said judgment, except in State cases, he shall be entitled to demand and receive from the party entering up the same the sum of twenty-five cents, which shall be charged among the costs of the case. (*Ibid*, Sec. 8.)

All executions issued upon judgment in said Court shall be signed by one of the Judicial Trial Justices, and be countersigned by the Clerk, and shall be directed to all and singular, the Constables of such County, and in every other respect shall be governed by the same rules as now pertain to executions issued by Trial Justices. (*Ibid*, Sec. 9.)

In case of the disability, inability from any cause, absence from the State, death or resignation of a Judicial Trial Justice, the place of the Justice so disabled, absent, dead or resigned, shall be filled until such disability or inability has been removed, or until the return of such Judicial Trial Justice, or until his successor has been appointed and qualified by the Ministerial Trial Justice of said County resident in the City of Charleston oldest in commission; and in case one or more of

such Ministerial Trial Justices shall hold commission of equal date, then the Ministerial Trial Justices in said city shall elect which of them shall serve. (*Ibid*, Sec. 10.)

In all cases in which it may be required by law that the decision shall be rendered by two Trial Justices, such cases shall be heard and determined by the Judicial Trial Justices, subject to the provision of the preceding Section. (*Ibid*, Sec. 11.)

Compensation of Clerk.—The Judicial Trial Justices shall have authority to appoint a Clerk for their Court, who shall hold his term of office at their pleasure, and who shall receive as his compensation, as such Clerk, the fees herein provided for entering judgment. (*Ibid*, Sec. 12.)

Docket fees.—The amount of docket fee to be charged in each case shall be as follows: When the sum sued for or amount of damages claimed shall be twenty dollars or less, the docket fee shall be twenty five cents; when it shall be more than twenty and less than fifty dollars, the docket fee shall be fifty cents; and when fifty dollars or over, the docket fee shall be one dollar; that the said docket fee shall be charged among the costs of the case. (*Ib.*, S. 13)

3RD—THEIR DISABILITIES AND LIABILITIES.

Justices prohibited from keeping taverns, &c.—It shall not be lawful for any person exercising the office of a Trial Justice within this State to keep any tavern, or to retail spirituous liquors, nor shall any license for retailing spirituous liquors be granted to any person exercising the office of a Trial Justice, nor to any person or persons in his house or family, or for his emolument; and if any person or persons shall offend against the true intent and meaning of this Section, he shall forfeit and pay the sum of two hundred and fifty dollars to any person or persons who will sue for the same, and be forever thereafter rendered incapable of serving in the office of a Trial Justice in this State. (Gen. Stat., C. XXV, S. 7 p. 195.)

Not to be judges in their own cases.—Regularly, justices ought not to execute their office in their own case, but cause the offenders to be convened, or carried before some other justice, or desire the aid of some other justice being present. (Grimke, 277.)

By Holt, Ch. J. M., 10 W., the mayor of Hereford was laid by the heels for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he, by the charter, was sole judge of the Court. (*Ibid.*)

And it is unjust, in many cases, for the magistrate to act in his own cause, so it is also imprudent; to which purpose the advice of Lord Coke is applicable, who upon the occasion of mentioning a certain judge who made a settlement of his own estate, which was void in law, and brought an action in his own name, which all the other judges, of his

own showing in the Court, where of opinion did not lie, makes the observation, that it is not safe for any man (*be he never so learned*), to be of counsel with himself in his own cause, but to take advice of other great and learned men; and the reason he gives is, for that men are generally more foolish in their own concerns than those of other people. (*Ib.*)

But a magistrate is a proper judge of contempt, offered to himself in the execution of his office (Lining *vs.* Bentham, 2d Bay, 1.)

And may issue a warrant for abusive words in relation to his office, and threats of personal injury to himself. (Edmondson *vs* Frean, 2d Hill, 410.)

A magistrate having jurisdiction of the subject matter, cannot be made liable in a civil action, unless fraud or collusion be shown; and such corruption must appear either from the grossness of the circumstances, or be proved *aliunde*. (Peake vs. Cantey, 3d McCorn, 107.)

4TH.—THEIR INDEMNITY AND PROTECTION.

Not to be Slandered or Abused.—A justice of the peace is not to be slandered or abused; as appears by the following case (M. 2, G. Aston and Blagrave.) The plaintiff declared, that he was a justice of the peace, and that upon a colloquium of him and the execution of his office, the defendant said, you are a rascal, a villian and a liar After verdict for the plaintiff, it was moved, in arrest of judgment, that these words are not actionable. It was urged for the plaintiff there is a great difference between magistrates and common tradesmen; words of the latter must affect them in their particular way of dealing; but anything which tends to impeach the credit of the former, is actionable; and although an indictment might not be for these words, as perhaps not tending to a breach of the peace, yet, nevertheless, they are actionable; for, in many cases, words are actionable, which are not indictable. After consideration, Pratt, C. J., delivered the opinion of the Court, that though rascal and villian were uncertain, yet, being joined with liar, and spoken of a justice of the peace, they imported a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. (2d Burns, 585.).

In the case of the Duke of Norfolk, H. 30. G. 3, Lord Kenyon declared, that, however magistrates may mistake the law, yet if they act with pure intentions, and not from corrupt or occasional motives, but mean to distribute justice, fairly and impartially, they are not liable to a criminal information for what they do. (*Ib.*, 588.)

And in the case of K. vs. Palmer, and Baine, esquires and others, E. 1, G. 3. Upon shewing cause why an information should not be granted against two justices of the peace and others, for a misdemeanor relating to the conviction of a poacher, and the circumstance attending it; the Court, on consideration of the affidavits, discharged the rule, as to all the defendants, with costs to be paid to the justices, but without costs

as to the others. And they were, upon this occasion, most explicit in their declaration that even where a justice acts illegally, (which, however, was not the present case), yet, if he has acted honestly and candidly, without oppression, malice, revenge or any bad view, or ill intention whatsoever, the Court will never punish him in this extraordinary course of an information; but leave the party complaining, to their ordinary legal remedy or method of prosecution, by action or by indictment (*Ibid.*)

And no justice shall be liable to be punished both ways, that is, civilly and criminally; but before the Court will grant an information, they will require the party to relinquish his civil action, if any such is commenced. And even in the case of an indictment, and though the indictment is actually found, the attorney general (on application made to him), will grant a *nol pros*, upon such indictment, if it appear to him that the prosecutor is determined to carry on a civil action at the same time. (2d *Ib.*, 589.)

TURNPIKES.

(*See Highways.*)

UNDERTAKING.

(*See Appeal, Attachment, Claim and Delivery of Personal Property, etc.*)

VAGRANTS.

1ST.—WHO TO BE DEEMED VAGRANTS.
2ND.—PROCEEDINGS IN, AND DISPOSITION OF, CASES AGAINST.

1ST.—WHO TO BE DEEMED VAGRANTS.

All persons wandering from place to place without any known residence, or residing in any city, county or town, who have no visible and known means of gaining a fair, honest and reputable livelihood; all keepers of gaming tables, faro-banks, or other banks whatsoever used for gaming, known under any other denomination; also, all persons who lead idle and disorderly lives; all who knowingly harbor horse thieves and felons, and those who are known to be of that character and description; likewise all persons (not following some handicraft, trade or profession, or not having some known or visible means of livelihood),

who shall be able to work, and occupying or being in possession of some piece of land, shall not cultivate such a quantity thereof as shall be deemed by the Trial Justice to be necessary for the maintenance of himself and his family; also, all persons representing publicly for gain or reward, without being duly licensed, any play, comedy, tragedy, interlude, or farce, or other entertainment of the stage, or any part thereof; all fortune tellers for fee or reward; and all sturdy beggars, are, and shall be, deemed vagrants, and liable to the penalties herein prescribed. (Gen. Stat. 381.)

2D.—PROCEEDINGS AGAINST.

Upon the oath of any credible person, that another is, to the best of his or her belief, a vagrant, and liable to the penalties prescribed by law, any Trial Justice shall issue his warrant forthwith, to any Constable, requiring the accused to be brought before him; and, upon the arrest of the person so charged, the said Trial Justice shall inquire into the truth of such information. (*Ibid*, Sec. 2.)

He shall proceed to examine how the accused gains a livelihood, and maintains his or her family, (if he or she has any,) and if such person shall be adjudged liable to the penalties prescribed by law, against such as are deemed vagrants, then, if the accused shall pay all lawful costs and charges of such proceeding, and give bond with sufficient security, to be approved by the Trial Justice, for his or her behavior for twelve months ensuing, such person shall be discharged; but, on refusal or inability to comply therewith, the Trial Justice may commit such person to jail, and shall transmit a copy of the proceedings, as soon as may be, to the Clerk of the Court of Common Pleas and General Sessions for the County, containing the names of the informer and accused, and the Trial Justice and jury, (if any,) together with those of the witnesses and the evidence they gave, which copy shall be filed in the office of the Clerk, for the use of the Court of General Sessions. ((*Ibid*, Sec. 3.)

VERDICTS.

When a jury, after due and thorough deliberation upon any cause, return into Court without having agreed upon a verdict, the Court may state anew the evidence, or any part of it, and explain to them anew the law applicable to the case, and may send them out for further deliberation; but if they return a second time without having agreed upon a verdict, they shall not be sent out again without their own consent, unless they shall ask from the Court some further explanation of the law. (Gen. Stat., C. CXI, Sec. 31, p. 523.)

VOTERS.

(*See Elections.*)

WARRANT.

A writ issued by a Justice of the Peace or other authorized officer, directed to a Constable or other proper person, requiring him to arrest a person therein named, charged with committing some offense, and to bring him before that, or some other Justice of the Peace. (3 Binn. Rep., 88.)

1st.—For What Cause it May be Granted.
2d.—When it may Issue, and its Authority.
3d.—Requisites of.
4th.—Form of.

1st.—FOR WHAT CAUSE IT MAY BE GRANTED.

A warrant may be lawfully granted by any Justice, for treason, felony, or *præmunire*, or any other offense against the peace; and it seems clear, that where a Statute gives any one Justice a jurisdiction over any offense, or a power to require a person to do a certain thing ordained by such Statute, it impliedly gives a power to every such Justice to make out a warrant to bring before him any one accused of such offense, or compellable to do anything ordained by such Statute; for it cannot but be intended that a Statute which gives a person jurisdiction over an offense, means also to give him the power incident to all Courts, of compelling the party to come before him. (4th Burns, 279.)

It seems to have been doubted by some ancient authorities, whether a Justice might grant a warrant on suspicion. Hawkins, vol. 2, p. 132, holds, that such doubts are contrary to constant practice and the Statute 1 and 2, P. & M., C. 10.

2d.—WHEN IT MAY ISSUE AND ITS AUTHORITY.

When May Issue.—All proceedings before Trial Justices, in criminal cases, shall be commenced on information, under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue. (Gen. Stat., C. XXV, Sec. 16.)

No warrant ought to be issued except upon the oath or affirmation of a witness, charging the defendant with the offense. (2 Binn. Rep., 88.)

A general warrant on a complaint of a robbery, to apprehend *all persons suspected*, has been ruled void. (4th Burns, 280.)

3d.—REQUISITES OF.

1st.—It ought to be under the hand and seal of the Justice who makes it out.

2d.—It ought to set forth the year and day wherein it is made, that in an action brought upon an arrest made by virtue of it, it may appear to have been prior to such arrest.

3d,—It is safe, but perhaps not necessary, in the body of the warrant, to show the place where it was made; yet it seems necessary to set forth the County in the margin, at least, if it be not set forth in the body.

4th.—It may be made either in the name of the King, or of the Justice himself. (2 Hawk, 136.)

5th.—It must plainly express the offense charged, and supposed time of its commission.

6th.—It must regularly mention the name of the party to be attached, and must not be left in general, or in blank, to be filled up by the party afterwards. (4th Burns, 282.)

7th.—A warrant may be either general, to bring the party before any Justice of the County, or special, to bring him before the Justice only who granted it.

8th.—It may be directed to the Sheriff, Bailiff, Constable, or to any indifferent person by name, who is no officer; for that, the Justice may authorize any one to be his officer, whom he pleases to make such, yet it is most advisable to direct it to the Constable of the precinct wherein it is to be executed; for that no other Constable, and *a fortiori*, no private person is compellable to serve it. (2 Hawkins, 137.)

9th.—The affidavit upon which the warrant is issued, must accompany the same.

Form No. 162.—General Form of Warrant.

THE STATE OF SOUTH CAROLINA,
County of———.

By A. B., Trial Justice in and for the said County and the said State.

To any Lawful Constable:

Whereas, complaint upon oath has been made unto me by ———, that at ———, in the County and State aforesaid, on the —— day of ———. A. D. 18—, one ———.

These are, therefore, to command you to apprehend the said defendant, ———, and bring —— before me to be dealt with according to law.

Given under my hand and seal at ———, the —— day of ———, A. D. 18—.

A. B., [L. S.]
Trial Justice.

AFFIDAVIT.

THE STATE OF SOUTH CAROLINA,
COUNTY OF——

Personally appeared before me A. B., a Trial Justice of the said County and the said State, C. D., who being duly sworn, says:

(Signed.) C. D.

Sworn to before me, the —— day of —— 18—.

A. B.,
Trial Justice.

WITNESS AND FORM OF WARRANT FOR. (*See Evidence and Recognizance.*)

Upon information made of the materiality of any witness within the State, to support any accusation made, or where the materiality of such witness shall be within the knowledge of any Trial Justice, he shall issue his warrant, requiring such witness to appear before him or the next Trial Justice, to enter into recognizance with good security, if deemed proper, which warrant shall authorize the arrest and detention of any such witness, in any County in the State; and on being brought before such Trial Justice, and refusing to enter into recognizance, such witness may be committed by the said Trial Justice; and the accused shall in felonies, and no other case, have the like process to compel the attendance of any witness in his behalf, as is granted or permitted on the part of the State: *Provided*, that no Trial Justice shall receive any fees for issuing more than one warrant for witnesses on the part of the State, or upon the part of the accused, in the same case, unless, on the second or other application, oath shall be made that the prosecutor or accused was not aware, at the issuing of the previous warrant, of the materiality of such witness. (Gen. Stat., 197; (*Ibid*, C. CXXXVIII, Sec. 7, p. 745.)

In criminal cases in Courts of Trial Justices, witness shall receive no fees or compensation whatsoever. (16 Stat., 412.)

FORM NO. 163.—WARRANT FOR WITNESSES.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ——. } *Witness Warrant.*

By A. B., Trial Justice, in and for the said County and the said State:

To any Lawful Constable:

Information having been given me that, (*here insert names of witnesses,*) are material witnesses in the case of State against E. F., for (*state offense.*)

These are therefore to command you to forthwith apprehend the said witnesses, and bring them before me for examination.

Given under my hand and seal at ———, this —— day of ———, A. D. 18—.

A. B, [L. S.]
Trial Justice.

NOTE.—The names of the witnesses should be endorsed on the back of the witness warrant, and under the endorsement of the case. Where the Statute requires an affidavit upon which to obtain a warrant for witnesses, such affidavit should accompany the warrant.

See Subpoena ———

WOMEN.

(*See Abduction, Bigamy, Rape, &c.*)

1ST.—OFFENSES AGAINST.
2D.—FOR WHAT CRIME A MARRIED WOMAN MAY BE PUNISHED.
3D.—HOW SHE MAY RENOUNCE HER DOWER.

1ST.—OFFENSES AGAINST.

Whereas women, as well as maidens, as widows and wives, having substances, some in goods movable, and some in lands and tenements, and some being heirs apparent to their ancestors, for the lucre of such substance are sometimes taken by misdoers contrary to their will, and after married to such misdoers, or to other by their assent or defiled; it is enacted, that what person that taketh any woman so against her will unlawfully, that is to say, maid, widow, or wife, that such taking, procuring, and abetting the same, and also removing willingly the same woman, so taken against her will, and knowing the same, be felony; and that such misdoers, takers, and procurators to the same, and recitors knowing the said offense, shall be adjudged as principal felons. (3 H. 7. C, 2.)

Upon the face of which said Statute of the 3 H. T., these things are required to make the offense felony:

1st.—That the maid, wife, or widow, have lands or tenements, or movable goods, or be an heir apparent.

2d.—That she be taken away against her will.

3d.—That the taking was for lucre.

4th.—That she was married to the misdoer, or to some other by his consent, or be defiled, (that is carnally known); for if these concur not, and be so laid in the indictment, the misdoer is not a felon within the Statute, but otherwise to be punished (3 Inst., 61; 1 Hawk., 110.)

The said Act makes not only the takers, but the procurers and abettors of the felony, and receivers of the woman willingly, knowing the same, to be all principal felons; the like whereof Lord Coke says, he hath not found in any other Statute that he remembers; but by the construction of the common law, they that receive the misdoers, and not the woman, are accessaries only. (3 Inst., 61, 62.)

But those who are only privy to the marriage, but no way parties to the forcible taking away or consenting thereto, are not within the Statute. (1 Hawk., 110.)

It is no manner of excuse, that the woman at first was taken away with her own consent; because if she afterward refuse to continue with the offender, and be forced against her will, she may, from that time, as properly be said to be taken against her will, as if she had never given her consent at all; for until the force was put upon her, she was in her own power. (1 Hawk., 110.)

Also, it is not material whether a woman so taken contrary to her will, be at last married or defied with her own consent or not, if she were under the force at the time. (*I bid.*)

2D.—FOR WHAT CRIMES A MARRIED WOMAN MAY BE PUNISHED.

But a *feme covert* is so much favored in respect of that power and authority which her husband has over her, that she shall not suffer any punishment for committing a bare theft, or even a burglary, by the coercion of her husband or in his company, which the law construes a coercion. But this is only the presumption of law; so that if upon the evidence it can clearly appear that the wife was not drawn to the offense by her husband, but that she was the principal inciter of it, she is guilty as well as the husband. And if she be any way guilty of procuring her husband to commit the offense, it seems to make her an accessary before the fact in the same manner as if she had been *sole*. And if she commit a theft of her own voluntary act, or by the bare command of her husband, or be guilty of treason, murder, or robbery, in company with or by coercion of her husband, she is punishable as much as if she were *sole*. And she will be guilty in the same manner of all those crimes which, like murder, are *mala in se*, and prohibited by the law of nature. And in one case it appears to have been held by all the Judges, upon an indictment againt a married woman, for falsely swearing herself to be next of kin, and procuring administration, that she was guilty of the offense, though her husband was with her when she took the oath. But upon an indictment for disposing of forged notes, it was ruled that a woman is protected by being the wife of a man indicted, who disposed of them in her presence, and with whom she was indicted. (1st Russell, p. 15.)

But where the wife is to be considered merely as the servant of the

husband, she will not be answerable for the consequences of his breach of duty, however fatal, though she may be privy to his conduct. Charles Squire and his wife were indicted for the murder of a boy, who was bound as a parish apprentice to the prisoner Charles; and it appeared in evidence that both the prisoners had used the apprentice in a most cruel and barbarous manner, and that the wife had occasionally committed the cruelties in the absence of her husband. But the surgeon who opened the body, deposed that in his judgment the boy died from debility and want of proper food and nourishment, and not from the wounds, etc., he had received. Upon which, Lawrence. J., directed the jury, that, as the wife was the servant of the husband, it was not her duty to provide the apprentice with sufficient food and nourishment, and that she was not guilty of any breach of duty in neglecting to do so, though, if the husband had allowed her sufficient food for the apprentice, and she had wilfully withholden it from him, that she would have been guilty. But that here the fact was otherwise; and, therefore, though *in foro conscientiae* the wife was equally guilty with her husband, yet, in point of law, she could not be said to be guilty of not providing the apprentice with sufficient food and nourishment. (*Ibid*, page 16.)

In inferior misdemeanors a wife may be indicted, together with her husband; and she may be punished with him for keeping a bawdy-house, for this is an offense as to the government of the house in which the wife has a principal share; and also such an offense as may generally be presumed to be managed by the intrigues of the sex. But a prosecution for a conspiracy is not maintainable against a husband and wife only; because they are esteemed but as one person in law, and are presumed to have but one will. (*Ibid.*)

In all cases where the wife offends alone without the company or coercion of her husband, she is responsible for her offense as much as any *feme sole*. Thus she may be indicted alone for a riot; may be convicted of selling gin against the injunctions of the 9th Geo., 2, C 23, or recusancy. And she may be indicted for being a common scold; for assault and battery; for forestalling; for a forcible entry; or for keeping a bawdy-house, if her husband do not live with her; and for trespass or slander. And she may also be indicted for receiving stolen goods of her own separate act without the privity of her husband; or if he, knowing thereof, leave the house and forsake her company, she alone shall be guilty as accessary; and though in a serious offense, such as that of sending threatening letters, the husband be an agent in the transaction, yet if he be so ignorantly by the artifice of the wife, she alone is punishable. And, generally, a *feme covert* shall answer as much as if she was *sole*, for any offense, not capital against the common law or statute; and if it be of such a nature that it may be committed by her alone, without the concurrence of the husband, she may be punished for it without the husband, by way of indictment; which being a pro-

ceeding grounded merely on the breach of the law, the husband shall not be included in it for any offense to which he is in no way privy. (*Ibid*, p. 17.)

It is no excuse for the wife that she committed the offense by her husband's order and procurement, if she committed it in his absence; at least it is not to be presumed in such case, that she acted by coercion. Sarah Morris was tried for uttering a forged order, knowing it to be forged, and her husband for procuring her to commit the offense; and it appeared that her husband ordered her to do it, but that she uttered the instrument in his absence. Upon a case reserved, the judges held that the presumption of coercion at the time of the uttering, did not arise, as the husband was absent at that time; and that the wife was properly convicted of the uttering, and the husband of the procuring. (*Ibid.*)

A *feme covert* is not guilty of felony in stealing her husband's goods, because husband and wife are considered but as one person in law, and the husband, by endowing his wife at the marriage with all his worldly goods, gives her a kind of interest in them; for which cause, even a stranger cannot commit larceny in taking the goods of the husband by the delivery of the wife, as he may be by taking away the wife by force and against her will, together with the goods of the husband. (*Ib.* p. 19.)

A *feme covert* shall not be deemed accessory to a felony for receiving her husband, who has been guilty of it, as her husband shall be for receiving her, nor shall be a principal in receiving her husband where his offense is treason; for she is *sub potestate viri*, and bound to receive him. Neither is she affected by receiving, jointly with her husband, any other offender. (*Ibid.*)

3RD.—HOW SHE MAY RENOUNCE HER DOWER.

Dower Released by Formal Acknowledgment.—Where a *feme covert* shall relinquish her right of dower in any real estate, and acknowledge the same in Court, or before any Judge of the Court of Common Pleas, Clerk of Court, Trial Justice, Notary Public, or a Commissioner, or Commissioners, and such acknowledgement shall be recorded, the same shall be effectual in law, to convey and pass away the right of such *feme covert*, although she has not executed or acknowledged any deed of conveyance for that purpose. (Gen, Stat., Chap. LXXXIII, Sec. 1, 429.)

How, by Conveyance—All deeds or other conveyances made in writing, under the hand and seal of husband and wife, and by them personally acknowledged before any duly qualified officer, (*the wife being first examined separately and apart from her husband by such officer, and giving her free consent to the same,*) shall be good and effectual in law to pass and convey all the estate, title and interest of such wife and her heirs. (*Ibid*, Sec. 2.)

Wife May Renounce Dower.—The wife of any grantor conveying real estate by deed of release, may, if she be of lawful age, release, re-

nounce, and bar herself of her dower, in all the premises so conveyed, by going before any duly authorized officer of the County wherein she may reside, or the land may be, and acknowledge before him, upon a private and separate examination, that she did freely and voluntarily, without any compulsion, dread or fear of any person whomsoever, renounce and release her dower to the grantee, and his heirs and assigns, in the premises mentioned in such deed. (*Ibid*, Sec. 3)

Certificate of Renunciation of Dower to be Endorsed.—A certificate, under the hand of the woman, and the hand and seal of the officer aforesaid, shall be endorsed upon such release, or a separate instrument of writing to the same effect, in the form, or to the purport, hereafter following, and be recorded in the office of Register of Mesne Conveyances in the County where the land lies:

FORM.

THE STATE OF SOUTH CAROLINA,
COUNTY OF ———.

I, F. G., (———, *Judge, Trial Justice, or other officer, as the case may be,*) do hereby certify unto all whom it may concern, that E. B., the wife of the within named A. B., did, this day, appear before me, and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear, of any person or persons whomsoever, renounce, release, and forever relinquish unto the within named C. D., his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in or to, all and singular, the premises within mentioned and released.

Given under my hand and seal this —— day of ———A. D. 18—.

(Signed,) E. B.

F. G., [L. S.]

(*Ibid*, Sec. 4.

OF WRECKS AND SHIPWRECKED GOODS.

Salvage Allowed for Saving Ships, Goods, etc.—How amount to be Fixed.—In case any person or persons not employed by the master, mariners, or owners, or other persons lawfully authorized, in the salvage of any ship or vessel, goods or effects, and cause the same to be carried, for the benefit of the owners, into any port, inlet or place of safety within this State, immediately giving notice thereof to a Trial Justice, such person or persons shall be entitled to a reasonable salvage for such services, to be paid by the master or owners of such vessel or goods; and in case

of disagreement about the quantum of such salvage, the same to be adjusted by not less than two neighboring Trial Justices, nor more than three. (Gen. Stat., Chap. LXXIII, Sec. 1, p. 387.)

Trial Justices may Employ aid to Save Vessels in Distress; to Adjust Salvage, etc.—When any ship or vessel, or effects, shall be stranded on any part of the coasts of this State, or upon any application of the commander of any ship or vessel stranded, to any Trial Justice, such Trial Justice shall forthwith summon to his aid one other Trial Justice, and such Trial Justices are hereby required and empowered to give aid, and to employ proper persons for the saving of such vessel in distress, or such vessels, goods, or effects, as shall be stranded or cast away, and also to examine persons upon oath, touching or concerning the same, or the salvage thereof, and to adjust the quantum of such salvage, and distribute the same among the persons concerned in the salvage, in case of disagreement among the parties, or the said persons; and every such Trial Justice, attending and acting for the preservation of any such vessel, or goods, shall be paid three dollars per day for his trouble out of the vessel, goods, or effects saved by their care or discretion. (*Ibid*, Sec. 2.)

Unclaimed Goods to be taken into Custody and Delivered to County Treasurer who shall Advertise the same, etc.—If any ship or vessel, goods or effects, shall be stranded, or cast on shore, and no person appears to claim the goods which shall be so saved, two or more neighboring Trial Justices shall take the same into their custody or possession, and, as soon as may be, give notice and a schedule, in writing, of the different articles, (such Justices keeping a copy thereof,) to the County Treasurer, and deliver safely all such goods and effects to the said Treasurer or his order, who shall be responsible for the same, and who shall give public notice thereof in the gazettes of this State, for at least eight months, if no claim should be made; and if such goods be not claimed within twelve months after such delivery to the County Treasurer as aforesaid, they are to be publicly sold, (or, if the goods be perishable, to be sold forthwith,) and, after deducting reasonable charges, the residue shall be lodged in the County Treasury, for the use of the State, subject to the claim of the proprietor, his agent or attorney. (*Ibid*, Sec. 3.)

Entry into Stranded Vessel may be Repelled by Force—Penalty for taking away Goods.—If any person or persons not empowered, shall enter, or try to enter, forcibly on board any ship or vessel stranded or cast away, or in distress, or molest in the preservation thereof, he or they may be repelled by force. And if any person or persons shall carry away, or secrete any goods and effects saved as aforesaid, such person or persons shall forfeit and pay treble the value, to be recovered by the owner of such goods, or his agent, in any Court of competent jurisdiction in this State. (*Ibid*, Sec. 4.)

Felony to Rob Vessels in Distress or Wrecked.—If any person or persons shall plunder, steal, take away, or destroy, any goods or mer-

chandise, or other effects, from any ship or vessel belonging to Prince or public, or to any private subject, of any foreign nation in alliance or neutrality with the United States, or belonging to any citizen of this or any other of the United States, which shall be in distress, or which shall be wrecked, lost, stranded, or cast on shore in any part of this State, (whether any living creature be on board such vessel or not,) or shall make a hole or holes in the bottom of any ship or vessel in distress, or shall take away a pump, or wilfully and unlawfully do any mischief tending to the loss of such ship or vessel, or shall take away any of the furniture, tackle, apparel, provision, or part of such ship or vessel, such person or persons so offending shall be deemed guilty of felony. (*Ibid*, Sec. 5.)

When Goods are of Small Value---When goods or effects of small value that may be stranded, shall be stolen, without circumstances of outrage or violence, the offender being convicted thereof, shall forfeit and pay treble the value, to be ascertained by two Trial Justices. (*Ibid*, S. 6.)

Trial Justice to issue Search Warrant for Stolen Goods.—It shall and may be lawful for any Trial Justice, on information, upon oath, of any part of a cargo or effects of any vessel lost or stranded on or near the sea coast, being unlawfully conveyed or concealed, or of some cause or reasonable suspicion thereof, to issue his warrant for searching for such goods or effects, as in cases of stolen goods; and, if the same be found in any house or other place, or in possession of any person not legally authorized to have the same, and the person in whose possession the same shall be found shall not immediately, upon demand, deliver the same to the owner or person lawfully authorized to receive them, he or she shall forfeit and pay to the owner or owners of such goods, his or their agent or attorney, treble the value for such refusal. (*Ibid*, S. 7.)

Salvage allowed Informer.—Any person discovering where any such goods are wrongfully bought, sold, or concealed so that the owner, his agent or attorney, shall regain them, shall be entitled to a reasonable salvage, not exceeding twenty-five per cent., on the value, to be adjusted by the next neighboring Trial Justice, who is here required to adjust the same. (*Ibid*, S. 8.)

Goods Unlawfully Taken from Vessels may be Seized and delivered to Owner.—If any person or persons shall offer or expose to sale any goods or effects whatsoever belonging to any ship or vessel lost, stranded, or cast ashore, as aforesaid, and unlawfully taken away, or reasonably suspected to have been, then and in every such case it shall be lawful for the person or persons to whom the same shall be offered for sale, or any Trial Justice, to stop and seize the said goods and effects; and if the person or persons who shall have offered the said goods and effects to sale, or some other person in his or her behalf, shall not, within ten days next after such seizure, make out to the satisfaction of such Trial Justice that they became honestly possessed of them, then the said goods and effects shall, by order of the said Trial Justice, be forthwith

delivered over to and for the use of the owner thereof, on proof of his claim, and the payment at a reasonable reward, not exceeding five per cent. on the value, for such seizure, (to be ascertained by the said Trial Justice), to the person who shall seize the same.

Penalty.—And he, she or they who offered such goods and effects for sale, as aforesaid, shall forfeit and pay to the owner or owners twice the value of such goods, to be recovered according to law. (*Ib.*, S. 9.)

Persons Assaulting.—If any Trial Justice or other person acting in the preservation or salvage of any vessel, goods or effects, shall be assaulted, beaten or wounded, every person or persons so assaulting, beating, or interrupting, shall, upon conviction thereof before the Court of Sessions, receive such punishment as the said Court, in their discretion, shall award. (*Ibid*, S. 10.)

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